SUPREME COURT OF THE UNITED STATES.

No. 379.

MORRIS SELZ AND HENRY LEOPOLD, APPELLANTS,

VS.

LEVI J. UNNA ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	1
Bill of complaint	4–15	2
Record entry	16	6
Answer of Clark	16–28	6
Wm. M. Ross	28–34	11
Strong	28–34	11
Record entries	35	13
Replication	36	14
Record entries	37–38	14
Supplemental bill	39	15
Appearance of H. A. & J. Kohn	47	17
Answer of H. A. & J. Kohn	48–63	18
Replication	64	24
Hearing and decree	65–70	25

COMPLAINANT'S TESTIMONY.

	Original.	Print.
Examination before H. W. Bishop, &c.	68–136	25
Testimony of Wm. Clarke	69	26
W. M. Ross	91	36
H. A. Kohn	103	41
W. W. Strong	106	42
J. E. Gary	115	45
E. Van Buren	119	47
E. C. Long	123	48
Deed from Werkmiester *et al.* to Leopold *et al.*	137	55

	Original.	Print
Writ of *fi. fa*	141	56
Certif. of sale	148	60
Deposition of David Sternberg	156	61
Joshua Loring	157	63

DEFENDANT'S TESTIMONY.

Deposition of C. Beckwith	160	64
Appeal bond	165	66
Stipulation as to supplemental bill	167	66
Clerk's certificate	168	67
Citation	169	67
Agreement of counsel	171	68

Transcript of record.

Circuit court of the United States for the northern district of Illinois, in chancery.

MORRIS SELZ and HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, *et al.*

1 Pleas in the circuit court of the United States for the northern district of Illinois, in chancery, at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district; and in the absence, pro tempore, of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Thursday, the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first year.

WM. H. BRADLEY, *Clerk.*

MORRIS SELZ and HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, JOHN H. ROSS, Leonard B. Shearer, William M. Strong, Daniel L. Shearer, and William Clark, *et al.*
} Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-three, 2 came Morris Selz and Henry Leopold, complainants, by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, their bill of complaint against the aforesaid defendants; and also at the same time filed their bond for costs in said entitled cause, which said bond and bill are, respectively, in the words and figures following, to wit:

Bond.

Circuit court, Dec. term, A. D. 1863, in chancery.

MORRIS SELZ *et al.*
vs.
LEVI J. UNNA, WILLIAM M. ROSS, *et al.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, I

hereby agree and stipulate that execution may issue against
3 my property for any costs taxed against complainants.

Dated this 14th day of Dec., A. D. 1863.

J. LIEBENSTEIN, Sr.

Indorsed: Filed Dec. 14th, A. D. 1863. Wm. H. Bradley, clerk.

4 *Bill of complaint.*

To the honorable the judges of circuit court of the United States in and for the northern district of Illinois:

In chancery sitting, Morris Selz and Henry Leopold bring this, their bill of complaint. against Levi J. Unna, William M. Ross, John H. Ross, Leonard B. Shearer, William W. Strong, Daniel L. Shearer, and William Clark; and thereupon your orators complain and say that on the 8th of May, A. D. 1858, and previous thereto, your orator, Morris Selz, and one Abraham Cohen were merchants and copartners trading and doing business in Chicago, Illinois, under the style of Selz & Cohen. That on said last-mentioned day said Selz & Cohen recovered a judgment in the Cook county court of common pleas within and for Cook county, Illinois, by confession, for
5 the sum of three hundred sixty-two and 8-100 dollars, and six
dollars costs, by confession, against one Edward Isidor, on a copartnership debt due and owing said Selz & Cohen by one David Sternberg and said Isidor, who were copartners in business in Chicago aforesaid.

That during the absence of your orator, Morris Selz, in New York, the attorney of said Selz & Cohen, one John M. Huntington, of the law firm of Huntington & Beatie, caused an execution of fieri facias, issued on said judgment, to be levied on certain goods and chattels as the property of the said Isidor, and at the same time similar executions, to wit, one in favor of Henry A. Khon and Joseph Kohn, who were co-partners under the style of H. A. Kohn & Bro., and also one in favor of William M. Ross and John H. Ross, who were also copartners under the style of Wm. M. Ross & Co.; and also one in favor of Leonard B. Shearer, William M. Strong, and Paine, who were also copartners under the name and style of Shearer, Paine & Strong, issued on judgments recovered on behalf of said copartners respectively against said Sternberg & Isador, were levied on
6 the same goods and chattels as the property of said Sternburg
& Isador, and the said goods and chattels were duly sold in part satisfaction of the several executions aforesaid; and your orators further say that before the sale of said goods and chattels under said execution, the sheriff of Cook county, in whose hands said executions respectively were, demanded from the execution plaintiffs, respectively, indemnifying bonds, and thereupon your orator, Henry Leopold, became the surety on the bond of indemnity which was then given said sheriff by said Selz & Cohen, in pursuance of his said demand.

And your orators further say that one Levi J. Unna, claiming to be

the owner of the goods and chattels so levied on and sold as aforesaid, by virtue of a purchase thereof from said Sternburg & Isidor, afterwards, and at the term of this honorable court, brought an action of trespass against the said plaintiffs in the said executions, and their sureties in the indemnifying bonds, given by them respectively for the recovery of damages for levying and selling the said goods and chattels under the said several executions, and such proceedings were had that afterwards on the 5th day of March,
7 A. D. 1859, the said Levi J. Unna, by the consideration and
judgment of the said court, recovered in the said action against such of the said persons as were served with process, to wit, Henry A. Kohn, Joseph Kohn, William M. Ross, John H. Ross, Morris Selz, Abraham Cohen, Henry Leopold, John M. Huntington, Leonard B. Shearer, William W. Strong, the sum of six thousand three hundred and seven dollars and eighty-nine cents, together with forty-five dollars and twenty-five cents costs of suit.

Your orators would further state that at the October term, 1858, the said action was tried by a jury, and the jury failing to agree upon a verdict, were discharged by the court and the action continued to the succeeding term. That at said trial in October, 1858, your orators appeared, by their attorney, and participated in the trial. That afterwards, and before the said trial at which said judgment was obtained, the said plaintiff, J. Unna, agreed with your orators that in consideration that your orators would desist and abstain from all participation in the further proceedings in said action and the preparation and conduct of the defence thereof,
8 he, the said plaintiff, would protect your orators and save
them harmless from all loss or damage from or under whatever judgment might be rendered in the said action, and so control and direct the collection or enforcement of the said judgment so to be recovered, that no part of the same should be paid or collected by or from your orators under any execution issued thereon or otherwise, and pursuant to said agreement, your orators did desist and abstain from all participation in the further proceeding in the said action and conduct of the defence thereof, and the counsel of your orators retired from the court-room at the time that the said cause was called for trial, with the knowledge of said Unna, and pursuant to the aforesaid understanding between your orators and said Unna.

And your orators further represent that afterwards, and in due course of law, certain of the defendants in said action of trespass, to wit, the said William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong sued out a writ of error from the Su-
9 preme Court of the United States on the said judgment in the
said action of trespass.

And your orators say that while the said writ of error was pending in the Supreme Court aforesaid, and before any determination of said Supreme Court thereon, the plaintiffs in said writ of error, William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong, paid and satisfied the said judgment so rendered in the said circuit court of the United States, with all costs to the date of

payment, and thereupon, at the instance and request of the said plaintiffs in error, the said judgment was, on or about the 18th of October, 1860, assigned to one Daniel S. Shearer and one William Clark, said Daniel being the copartner of said Leonard B. Shearer and William W. Strong, or one of them, residing in Boston, and said Clarke being the friend of said Ross, and your orators say that the said assignment was not bona fide nor for value, but made with intent on the part of said William M. Ross, John H. Ross, Leonard Shearer, and William W. Strong, to enforce contribution from
10 your orators in judgment of said payment, by allowing the said judgment to remain on the docket of said court unsatisfied of record, and apparently open and assigned to said Daniel L. Shearer and William Clarke, to be by them collected in part out of your orators for the benefit and at the instance of said plaintiffs in error. And your orators say that after the payment and satisfaction of the said judgment as aforesaid, the said plaintiffs in error did not take or institute any further or other steps or proceedings in the prosecution of said writ of error, but by collusion with said Daniel and said Clarke, permitted and allowed the same to be dismissed for want of prosecution thereof, and on the 10th of October, 1863, the mandate of said Supreme Court dismissing the said writ of error was filed in said circuit court, and an order of said court made docketing said cause and dismissing the same at the costs of the said plaintiffs in error.

And your orators further say that *that* the said William M.
11 Ross, John H. Ross, Leonard B. Shearer, and William W. Strong well knew of the aforesaid agreement between your orators and said Unna.

And your orators further say that the said William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong, falsely and fraudulently pretending that the said judgment has been purchased for value by said Daniel L. Shearer and William Clarke, and that the same has been in good faith assigned to them, have caused an execution of fieri facias to be issued on the said judgment, and levied on all the interest of your orator, Henry Leopold, in sub-lot number two of block number nineteen of the canal trustees' sub-division of fractional setion number fifteen, addition to Chicago, Illinois, except twenty by ninety-two feet from the northeast quarter of said lot, deeded to George Arnstein, and twenty by ninety-two and one-half feet from the southeast part of said lot, deeded to Solomon Leiberestein, and purpose selling the same under the said execution,
12 in order to compel your orators to reimburse them in part the money so as aforesaid paid by them in satisfaction of the said judgment and costs, and the marshal has caused advertisement to be made pursuant to law, that said real estate will be sold on the 17th day of December instant, at the court-house in Chicago.

And your orator, Henry Leopold, says that about the first day of April, 1861, he, and his copartner in business, one Benedict Sclossman, made an assignment of their property and effects to Emanuel Frankenthal for the benefit of their creditors, and by way of conve-

nience executed a quitclaim deed, conveying to said Frankenthal the said real estate, but in fact the same was conveyed at the same time with the execution of the said assignment, and to give operation and effect thereto and for the purposes mentioned in said assignment. That the assets of said Leopold and Sclossman were insufficient to pay their debts, and the said real estate was, on or about the 15th day of September, 1863, sold and conveyed by said
13 assignee, Emanuel Frankenthal, to one Henry Scholkopf for
the sum and price of three thousand dollars, and said Henry paid the purchase money thereof to said Frankenthal, and is now in possession thereof.

Your orator says that the said real estate was owned by him and said Schlossman as copartners, and obtained by them in their copartnership business and dealing, and your orator, Henry Leopold, had no other interest therein than what would have remained due him on settlement of partnership accounts, and on such settlement, in point of fact, there was nothing due him, as the firm could not pay its debts, and a large amount of indebtedness remains due by the firm without any assets in the hands of the assignee to meet and pay the same, which facts are well known to all the parties aforesaid. And your orators say that said Levi J. Unna has no interest whatever in the said judgment, but allows the same to remain unsatisfied pursuant to an agreement with said Daniel L. Shearer and William Clarke, at the time the same was paid and satisfied,
14 as hereinbefore alleged.

In consideration of the premises, your orators pray your honors that the said Levi J. Unna, Daniel L. Shearer, William Clarke, William M. Ross, John H. Ross, Leonard B. Shearer, William W. Strong may be made parties defendant hereto, that they be compelled to answer all and singular the allegations herein contained.

That they be enjoined from proceeding further in the sale of the said real estate, until the further order of this court in the premises; and that on a final hearing of this cause, they may be enjoined from further proceedings to collect the said judgment, and that the said judgment may be declared paid and satisfied, and that an order of satisfaction be made by said plaintiff, Unna, and said Daniel L. Shearer, and William M. Clarke, upon the judgment docket of this court of the said judgment, and that your honors would grant such other and further relief as is just and equitable; that a sub-
15 pœna may issue, &c., and as in duty bound, your orators will
ever pray, &c.

MORRIS SELZ.
GOOKINS, THOMAS & ROBERTS, *P. Q.*

UNITED STATES OF AMERICA,
Northern District of Illinois:

Morris Selz, being duly sworn, says he has heard read the foregoing bill of complaint, and knows the contents thereof. That the same is true, except the matters stated on information and belief, and as to those he believes it to be true.

MORRIS SELZ.

[5-ct. rev. stamp, cancelled.]

Subscribed and sworn to before me, this 12th day of Dec., 1863.
FRED. W. COLE, *U. S. Com.*

Indorsed: Filed Dec. 14, 1863.
WM. H. BRADLEY, *Cl'k.*

16 On this day, to wit, the 16th day December, A. D. 1863, in the record of proceedings of said court in the said entitled cause is the following entry, to wit:

Morris Selz *et al.*
vs. } Chancery.
Levi J. Unna *et al.*

Now come the complainants by their solicitors, and move the court for an injunction against said defendants on the bill filed herein, and after argument of counsel, the court not being now sufficiently advised in the premises, takes the same under advisement.

On this day, to wit, the 16th day of December, A. D. 1863, came said defendant William Clark, by his solicitors, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Wm. Clark.

In the circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery.

The separate answer of William Clark, one of the defendants
17 named in the bill of complaint of Morris Selz and Henry Leopold, exhibited in said court against this respondent and Levi J. Unna, William Ross, John H. Ross, Leonard B. Shearer, William W. Strong, and Daniel L. Shearer:

This respondent, saving and reserving to himself all manner of exception and benefit of advantage to the many errors and insufficiencies in said bill contained, for answer thereto, or so much thereof as he is advised is material for him to make answer unto, answering, says: He admits the recovery and obtaining of the several judgments in the Cook county court of common pleas, in said bill mentioned, and the issuance of execution thereon, and the levy and sale thereunder in said bill stated, so far as appears from the record thereof now in said court, and to which for greater certainty he prays leave to refer; but as to all other statements in said bill contained with regard to said judgments, this respondent having no knowledge, notice, or information, insists upon strict proof.

And this respondent, further answering, admits that said defendant Unna, on the 5th day of March, A. D. 1859, by the
18 consideration and judgment of this honorable court, recovered the sum of $6,307 89-100, together with the costs in an action of trespass against the several parties in said bill in that respect named.

And this respondent, further answering as to the statement in said bill, that at the October term, A. D. 1858, the said action was tried by a jury, and the jury failing to agree upon a verdict, were discharged by the court, and the action continued to the next succeeding term, says he admits it to be true so far as appears from the record in said cause, but whether in fact said complainants appeared by counsel at said term, or made the very fraudulent agreement or arrangement with said defendant Unna in said bill mentioned, this respondent has no knowledge, notice, or information, only from the statement in said bill contained in that respect, and therefore leaves the said complainants and said Unna to discuss and dispose of such fraudulent transactions as they may have had in any manner they may be advised is best and proper for them.

19 And this respondent, further answering, says he admits that the defendants William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong, after the recovery of said judgment sued out of the Supreme Court of the United States a writ of error thereon, but this respondent denies most emphatically that while the same was pending in said Supreme Court, or at any other time, before or since, that the said plaintiffs in error, William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong, or any or either of them, or any other person or persons for them, or any or either of them, or any one else paid and satisfied the said judgment, or any part thereof, so rendered in this honorable court, with all costs to the date of payment, and that thereupon, at the instance and request of said plaintiffs in error, the said judgment was assigned to said defendant Daniel L. Shearer, and the respondent without consideration, and in bad faith as in said bill stated, but this respondent does say and aver, that on or about the 18th day of October, A. D. 1860, the said Levi J. Unna, for a good and valuable consideration to him fairly and in good faith paid by this respon- 20 dent and said Daniel L. Shearer, out of their own moneys, and not in any other manner or way so far as this respondent is concerned or has any notice, knowledge, or information, by his certain instrument in writing of that date, assigned, granted, bargained, and sold to the said Daniel L. Shearer, and this respondent, the said judgment so recovered as by the said assigment and other instruments therein mentioned, copies whereof are hereto attached, marked A, B, will more fully appear, and not as in said bill most unscrupulously and unfairly stated by collusion or fraud and as the friend of said Rosses.

And this respondent, further answering, says he has no knowledge, notice, or information only from the statement in said bill whether said William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong well knew or had any knowledge of the fraudulent agreement between said complainants and said defendant Unna in said bill stated, and therefore this respondent denies the said statement in that respect, and demands proof thereof.

21 And this respondent, further answering, says he has no knowledge, notice, or information of any false and fraudulent pretences of the said defendants William M. Ross, John H. Ross,

Leonard B. Shearer, and William W. Strong about the purchase of said judgment by said Daniel L. Shearer and this respondent, or the causing execution to be issued thereon, only from the statement of said complainants in their said bill, which statement this respondent denies, and avers that on or about the day of , A. D. 1863, this respondent and said Daniel L. Shearer, by their attorneys, Merrick & McKinnon, caused execution to be issued on said judgment, and placed in the hands of the marshal of said district to execute, and that some of the defendants in said execution named have contributed and paid their pro rata share thereof, as by this said execution will more fully appear, and that the said complainants failing and refusing to contribute or pay their proportion of said execution, or any part thereof, this respondent and said Daniel L. Shearer, by their said attorneys, directed the said marshal to levy the same on the property of said complainants subject thereto, in pursuance of which direction the said marshal has, as this respondent is advised,
22 levied the same and advertised property for sale thereunder.

And this respondent, further answering, says as to the matters and things in said bill by said complainant Leopold particularly stated, he has no knowledge, notice, or information, and therefore leaves the said complainants to dispose of the same as they may be advised is proper.

And this respondent, further answering, denies all fraud and collusion in said bill stated and charged, and having now fully answered, prays to be hence discharged with his reasonable costs.

WM. CLARK,
By McKINNON, *his Counsel.*

MERRICK & McKINNON, *Sol's, &c.*

STATE OF ILLINOIS, *County of Cook, ss:*

William Clark, having been duly sworn, says he is the person whose name is subscribed to the above answer; that he has read the same and knows the contents thereof, and that the same is true so far as stated of his own knowledge, and so far as stated upon his information he believes it to be true.

WM. CLARKE.

23 Sworn to and subscribed before me, this 16th day of Decb., A. D. 1863.

WM. H. BRADLEY, *Cl'k.*

Indorsed: Filed Dec'b. 16th, 1863.

WM. H. BRADLEY, *Cl'k.*

[5-cent int. rev. stamp.]

Exhibit A.

In the circuit court of the United States for the northern district of Illinois.

Levi J. Unna, plaintiff,
vs.
Henry A. Kohn, **Joseph Kohn**, **William** M. Ross, John H. Ross, Morris Selz, Abraham Cohen, Henry Leopold, John M. Huntington, Leonard B. Shearer, and William W. Strong, defendants.
} Action of trespass.

For and in consideration of the sum of six thousand five hundred and forty-six dollars and twenty-eight cents, to me in hand paid by Daniel L. Shearer and William Clarke, the receipt whereof is hereby acknowledged, I do hereby grant, bargain, sell, and assign to the said Daniel L. Shearer and William Clarke the judgment by
24 me recovered in the above-entitled cause against the above-named defendants for six thousand three hundred and seven dollars and eighty-nine cents damages and two hundred and thirty-eight dollars and thirty-nine cents costs. To have and to hold the same to the said Daniel L. Shearer and William Clarke, their executors, administrators, and assigns forever.

And I do hereby agree, covenant, and represent to and with the said Daniel L. Shearer and William Clarke that I have made, done, or suffered no act or thing by which the said judgment is in any manner impaired or lessened in value; that no part of the same has been paid, released, or assigned, (except to Messrs. Van Buren, Tuley & Garey an assignment was made of fifteen hundred dollars thereof, which they have reassigned to me,) and that said judgment now exists in full force and virtue to all intents and purposes, except so far as the same may be affected by the writ of error thereupon now pending in the Supreme Court of the United States, meaning and intending hereby to make such representations to the said Daniel L. Shearer and William Clarke as would, if false, bring me within the
25 provisions of the 153d section of chapter 30 of the revised statutes of 1845 of the State of Illinois: Provided, that so much of said money as is for costs shall be paid into said court for the use of the persons who have rendered the services for which said costs are taxed, or for my use where I have paid those persons: and provided further, that the said Daniel L. Shearer and William Clarke take the said judgment at their own risk as to the result of said writ of error or the solvency of said defendants, and that no costs or expenses shall hereafter be incurred upon my account in or about the collection of the said judgment, but that all costs either in the Supreme Court on said writ of error or in the circuit court or on executions to be issued upon said judgment shall be borne by the said Daniel L. Shearer and William Clarke.

Witness my hand and seal, this 18th day of October, A. D. 1860.

[SEAL.] LEVI J. UNNA.

Witnesses: M. F. Tuley.
Joseph E. Gary.

26 *Exhibit B.*

In the United States circuit court for the northern district of Illinois.

LEVI J. UNNA, plaintiff,
vs.
HENRY A. KOHN, JOSEPH KOHN, William M. Ross, John H. Ross, Morris Selz, Abraham Cohen, Henry Leopold, John M. Huntington, Leonard B. Shearer, William W. Strong, defendants.

For and in consideration of the sum of one dollar, to me in hand paid by Evart Van Buren, Murray F. Tuley, and Joseph E. Gary, the receipt whereof is hereby acknowledged, I do hereby grant, bargain, sell, assign, and transfer to the said Evart Van Buren the sum of three hundred dollars, to the said Murray F. Tuley the sum of six hundred dollars, and to the said Joseph E. Gary the sum of six hundred dollars of the judgment recovered by me in the above-entitled cause, to be paid to them out of the first moneys collected upon or realized out of the said judgment, together with the
27 interest which may have accrued upon the said portions of said judgment since the rendition thereof.

To have and to hold the said portions of the said judgment to the said Evart Van Buren, Murray F. Tuley, and Joseph E. Gary, their executors, administrators, and assigns forever. This assignment being made as security for what I owe the said Evart Van Buren, Murray F. Tuley, and Joseph E. Gary for professional services as attorneys at law.

Witness my hand and seal this first day of July, A. D. 1859.

LEVI J. UNNA. [SEAL.]

Witness: DAVID STERNBERG.

In consideration of the sum of one dollar, to us in hand paid by the above Levi J. Unna, the receipt of which we hereby acknowledge, we do hereby reassign to the said Levi J. Unna all the right, title, and interest which we acquired by virtue of the above assignment.

Witness our hands and seals this 17th day of October, A. D. 1860.

[SEAL.] EVART VAN BUREN.
[SEAL.] MURRAY F. TULEY.
28 [SEAL.] JOSEPH E. GARY.

On this day, to wit, the 16th day of December, A. D. 1863, came said defendants, William M. Ross, John Ross, and William W. Strong, by their solicitors, and filed in said clerk's office their answer in said entitled cause, which said answer is in the words and figures following, to wit:

Ans. of W. M. and J. Ross and W. W. Strong.

In the circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery.

The joint and separate answer of Wm. M. Ross and John H. Ross and William W. Strong, three of the defendants named in the bill of complaint of Morris Selz and Henry Leopold, exhibited in said court against these respondents and Levi J. Unna, Daniel L. Shearer, and Leonard B. Shearer:

These respondents, now and at all times hereafter saving and reserving to themselves and each of them all manner of advantage and benefit of exception to the many errors and insufficiencies in said bill of complaint contained, for answer thereto, or to such parts thereof 29 as they are severally advised are material for them to make answer unto, answering, say that they, the said Wm. M. and John H. Ross, jointly, and the said Wm. W. Strong, severally admit the recovery, in the Cook county court of common pleas, of the several judgments in said bill mentioned, and also the issuance of execution thereon and levies in said bill stated, so far as appears from record thereof in the office of the clerk of said court, and to which said records these respondents, for greater certainty, pray leave to refer; but as to all other statements in said bill contained with regard to the said judgments, these respondents, having no knowledge, notice, or information, only so far as they were respectively interested, insist upon strict proofs.

And these respondents, as aforesaid answering, admit that the said defendant, Levi J. Unna, on or about the fifth day of March, A. D. 1859, by the consideration and judgment of this honorable court, recovered the sum of $6,307 87, together with costs, against the several parties in that respect named. And the respondents as aforesaid, answering, say with regard to the statement in said bill, that at the October term, A. D. 1858, the said action was tried by a jury, 30 and the jury failing to agree upon a verdict, were discharged by the court, and the action continued to the next succeeding term, they admit to be true. But whether in fact said complainant appeared by counsel at said term, or made the very fraudulent agreement or arrangement with said defendant Unna, in said bill mentioned, these respondents have no knowledge, notice, or information only from the statement in said bill contained in that respect, and therefore leave the complainants and said Unna to dispose of all fraudulent transactions between them as they may be advised is best for them.

And these respondents, further answering as aforesaid, admit that they and the defendant, Leonard B. Shearer, after the recovery of said judgment against them, sued out of the Supreme Court of the United States a writ of error thereon; but these respondents deny that while the same was pending in said Supreme Court, or at any time before or since, they, the said plaintiffs in error, or any or either of them, or any other person or persons for them, or any or either of them, or any one else, paid off and satisfied the said judgment or

any part thereof, with all costs to date of payment, and that there-
31 upon, at the instance and request of said plaintiffs in error, the
said judgment was assigned to said defendants, Daniel L. Shearer and William Clark, without consideration and in bad faith as in said bill stated. But these respondents, upon their information and belief, do say and aver that on or about the 18th day of October, A. D. 1860, and while said writ of error was still pending, the said Levi J. Unna, for a good and valuable consideration to him fairly and in good faith paid by the said defendants, Daniel L. Shearer (who was not a member of the firm of Shearer, Strong &   as in said bill stated) and William Clark, out of their own moneys and not otherwise, so far as these respondents are concerned or have any knowledge, notice, or information, by his certain instrument of writing of that date sold, assigned, granted, and bargained to the said Daniel L. Shearer and William Clark the said judgment by him so recovered, and not by collusion or fraud as in said bill very unjustly stated. And these respondents further say that the reason why they suffered the said bill of error to be dismissed, was not as in said bill stated, but be-
cause they were advised by counsel they did not have a suffi-
32 cient defence upon the record, and for no other or different rea-
son. And these respondents, further answering as aforesaid, say, they have no knowledge, notice, or information, only from the statement in complainant's bill, of the fraudulent agreement between said complainant, Levi J. Unna, and therefore deny that they well knew or had any knowledge thereof whatever.

And these respondents, further answering as aforesaid, deny that the said judgment was transferred to said Daniel L. Shearer & William Clark by and through any false and fraudulent pretences on their part, or on the part of said plaintiffs in error, as in said bill stated, but do aver that the same was purchased and paid for as hereinbefore stated. And these respondents further deny that on or about the   day of   , A. D. 1863, execution was issued on said judgment at the instance or request of these respondents or their counsel, but on the contrary thereof, these respondents aver that on or about the date aforesaid, as they are informed and believe, execution was isued thereon at the instance and request of the defendants, Daniel L. Shearer and William Clark, by their attorneys Merrick &
McKinnon, and placed in the hands of the marshal of said dis-
33 trict to execute, and that these respondents have paid and con-
tributed their pro rata share of the said executions will fully appear thereby; and that said complainants failing and refusing to pay their share, the said execution, by direction of the said Shearer & Clark, was levied on some property in Cook county, Illinois, and that the same is now advertised by the said marshal, as will more fully appear by the said execution and proceedings of said marshal thereon.

And these respondents, further answering as aforesaid, say, as to the matter and things in said bill by said complainant, Leopold, particularly stated, they have no knowledge, notice, and information, and therefore leave the said complainants to dispose of the same as they may be advised is proper.

And these respondents, further answering, deny all fraud and collusion of every manner and nature in said bill stated and charged. And having now fully answered pray to be hence discharged with their costs.

W. M. ROSS.
WM. W. STRONG.

STATE OF ILLINOIS, *County of Cook*, *ss:*

34 Having been duly sworn, say they are the same defendants whose names are subscribed to the foregoing answer, that they have read the same and know the contents thereof, and that the same is true so far as stated of their own knowledge, and so far as stated on their information and belief, they believe it to be true.

W. M. ROSS.
WM. W. STRONG.

Sworn and subscribed to before me, this 16th day of Dec., 1863.
WM. H. BRADLEY, *Clerk*.

Indorsed: Filed Dec. 16, 1863.
WM. H. BRADLEY, *Clerk*.

35 On this day to wit, the 17th day of December, A. D. 1863, in the record of the proceedings of the said court in chancery, in the said entitled cause, in the following entry, to wit:

MORRIS SELZ and HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, *et al.*
} Chancery.

The court having fully considered, and being now sufficiently advised upon the motion of the complainants for an injunction herein, denies the same.

On this day, to wit, the 29th day of January, A. D. 1864, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

MORRIS SELZ and HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, JOHN H. Ross, Leonard B. Shearer, and William Clarke.
} Chancery.

36 Now comes the complainants, by Gookins, Thomas & Roberts their solicitors, and on motion, leave is given to examine the defendants, who have entered their appearance and filed their answers herein, before H. W. Bishop, jr., esq., master in chancery of this court, such examination to be subject to all exceptions as to the competency of the same.

On this day, to wit, the 7th day of June, A. D. 1864, came said complainants, by their solicitors, and filed in said clerk's office their replication in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Nor. Dis. of Illinois:

The replication of Henry Leopold and Morris Selz, complainants, to the several answers of William M. Ross, William Clarke, and William W. Strong, defendants:

These repliants, saving and reserving all benefit of exception to the insufficiencies of said answers, for replication thereunto, severally say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said
37 answers of the said defendants severally are uncertain, untrue,
and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said several matters contained, material, or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed, &c.

GOOKINS, THOMAS & ROBERTS,
Sol's, P. Q.

Indorsed: Filed June 7, 1864.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 23d day of June, A. D. 1864, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

MORRIS SELZ & HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, JOHN H. Ross, Leonard B. Shearer, William M. Strong, Daniel L. Shearer, & William Clarke.
} Chancery.

38 On motion of the complainant's solicitor, leave is granted
them by the court to examine witnesses generally, before H. W. Bishop, jr., esq., master, upon giving the defendants or their counsel notice of the time and place of taking the same under the usual rules and practice of this court.

On this day, to wit, the 25th day of March, A. D. 1865, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

MORRIS SELZ & HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, JOHN H. Ross, Leonard B. Shearer, William M. Strong, Daniel L. Shearer, and William Clarke.
} Chancery.

Now come the complainants, by their solicitor, and by leave of the court, file their supplemental bill herein.

The supplemental bill, filed by said complainants in said entitled cause, is in the words and figures following, to wit:

39 *Sup. bill.*

To the honorable the judges of the circuit court of the United States in nor. dis. of Ill., in, &c.:

Your orators, Henry Leopold and Morris Selz, complainants in the original bill filed herein, bring this their supplemental bill against Henry A. Kohn and Jos. Kohn, who is a citizen of the State of Illinois and of the northern district of Illinois, residing in Chicago.

And your orators say that heretofore, to wit, about the 14th of December, 1863, your orators filed in this honorable court their bill of complaint against Levi J. Unna, William M. Ross, John H. Ross, Leonard B. Shearer, William W. Strong, Daniel L. Shearer, and William Clark, alleging therein, among other things, that on the 8th of May, A. D. 1858, and previous thereto, your orator, Morris Selz, and one Abraham Cohen were merchants and copartners in business in Chicago, Illinois, under the firm, name, and style of Selz & Cohen.
That on said last-mentioned day said Selz & Cohen recovered,
40 (here set out the bill of complaint substantially,) as will
more fully appear by reference to the said original bill.

And your orators further represent unto your honor that the marshal for the said northern district of Illinois, afterwards, and on the 17th of December, 1863, sold all the right, title, and interest of your orator, Henry Leopold, in the said real estate upon the said execution so issued upon the said judgment, and at the said sale the said Henry A. Kohn became the purchaser thereof for the sum and price of two thousand one hundred and seventy-five dollars, that being the highest and best bid therefor at the said sale, and he being the highest and best bidder therefor; and your orators say that the said Henry A. Kohn is the same person mentioned in the said original bill so filed by them, who, together with his copartner, the said Joseph Kohn, under the style of H. A. Kohn & Bro., so re-
covered judgment against said Isidor, and levied execution
41 upon the said goods and chattels, as mentioned in the said
original bill, and against whom the said Unna recovered judgment for $6,307 89, as in said original bill alleged.

And your orators say that previous to the filing of the said original bill, and at about the time of the second trial of the said action of trespass, and the making of the agreement between your orators of the one part and said Unna of the other part, as alleged in the said original bill, the said Henry A. Kohn had full knowledge and notice of the making of the said last-mentioned agreement, and of the fulfilment by your orators of the said agreement, and all things therein contained on their part to be fulfilled and done; and, in fact, your orators allege that said Henry A. Kohn was present in the court-room where your orators and their counsel so retired, as in said original bill alleged and was cognizant thereof, and of the reasons therefor as in said bill alleged; and, in fact, your orators allege, upon information and belief, that the said H. A. Kohn & Bro's at the same time made an agreement in all respects similar and 42 upon like consideration to that of your orators with said Unna, and in like manner performed the same upon their part by abstaining and retiring from the further defence of the said suit.

And your orators further state unto your honors that said Henry A. Kohn did not take part in suing out the said writ of error to the Supreme Court, nor in any of the proceedings thereon; but, in fact, the same were conducted by and on behalf of said William M. Ross, John H. Ross, and said Leonard B. Shearer. That after the said cause was dismissed in the Supreme Court for want of prosecution, at the costs of the defendant, and after the docketing and dismissal of said cause by this court on the 10th of October, 1863, the said Henry A. Kohn, though he well believed that the assignment of the said judgment from the said Unna to said Daniel L. Shearer and William Clark was a mere cover, and that the said judgment was, in fact, paid by said William M. Ross, John H. Ross, and Leonard B. Shearer, in order to avoid being harrassed by the persons seeking to enforce the collection and payment thereof from said H. A. 43 Kohn & Bro's, and involving said firm in litigation with the persons so seeking to enforce the collection and payment thereof, as aforesaid, entered into an agreement with one John S. Paine and Messrs. Merrick and McKinnon, the attorneys employed to enforce collection of said judgment, acting, in fact, for said William M. Ross, John H. Ross, and Leonard B. Shearer, though nominally for said Daniel L. Shearer and William Clark, in and by which agreement it was agreed that said H. A. Kohn & Bro's should pay to said parties enforcing the collection of the said judgment the sum of $2,136 97 in cash, and should also purchase the said real estate which should be levied on under said execution at the sale thereof, and pay therefor the further sum of $2,175, making in all the sum of $4,311 97 to be so paid by said H. A. Kohn & Bro's on said judgment, and that, as to said H. A. Kohn & Bro's, said judgment should be entered satisfied, the said persons claiming that the firm of William M. Ross & John H. Ross, and the firm of Shearer, Paine & Strong, and the firm of Selz & Cohen, and the firm of H. A. 44 Kohn & Bro's, should each pay one-fourth part of the said judgment, and that said Kohn & Bro's should realize out of the said real estate the amount to be by them paid therefor.

And your orators say that, pursuant to said agreement, the said H. A. Kohn & Bro's paid to said Merrick & McKinnon the said sum of $2,136 97, and the said real estate was levied upon and bid in at the said sale under said execution by said Kohn for the sum of $2,175, and that said Kohn will be entitled to a deed therefor on the 17th day of March instant, unless this court shall enjoin the making and delivery thereof as hereinafter prayed for.

And your orators allege that the facts set forth in the said original bill are substantially true, and proof thereof has been taken before the master of this court in this cause, to which they refer in support of the allegations herein, and which they pray may be read upon the motion for the injunction prayed for in this cause; and your orators allege that the said agreement between said H. A. Kohn & Bros. and said Paine and Merrick & McKinnon was made and entered
45 into before the filing of the original bill herein, and said Henry A. Kohn was, before the filing of said original bill, informed by the said William M. Ross that the said defendants in said judgment, or some of them, had paid the same for the face thereof, without interest, and caused the same to be assigned to said Shearer and Clarke, as aforesaid.

Your orators therefore pray your honors that the said Henry A. Kohn and Joseph Kohn may be made parties defendants to this suit, that they may be compelled to answer all the allegations herein contained upon oath; that an injunction may issue restraining and enjoining them from receiving a deed from the marshal for the said real estate, or in any manner interfering with the said real estate, and from assigning or selling the certificate of purchase thereof, and that your honors would direct the marshal of this court not to execute and deliver a deed of said premises to said Kohn.

That process may issue, &c., and that your honors would grant such other and further relief, and such other and different relief, as is just and equitable, and your orators will ever pray.

46 GOOKINS & ROBERTS,
Sol's for Compl'ts.

UNITED STATES OF AMERICA,
Northern District of Illinois:

Henry Leopold and Morris Selz, being duly sworn, say that they have read the foregoing supplemental bill, signed by them, and know the contents thereof, that the same is true, except the matters and things therein stated upon information and belief, and as to those they believe it to be true.

Subscribed and sworn to, this day of March, 1865.

Indorsed: Filed March 25th, 1865.

WM. H. BRADLEY, *Cl'k.*

47 *Appearance.*

On this day, to wit, the 25th day of March, A. D. 1865, came Henry A. Kohn and Joseph Kohn, by their solicitors, and filed in said clerk's office their appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

In the circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery.

MORRIS SELZ *et al.*
vs. } Sup. bill.
LEVI J. UNNA and others.

We hereby enter appearance for the def'ts, Henry A. Kohn and Jos. Kohn in the supplemental bill named.

MONROE & McKINNON, *Sol's, &c.*

Indorsed: Filed March 25th, '65.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 16th day of May, A. D. 1865, came said Henry A. and Joseph Kohn, by their solicitors, and filed in said clerk's office their answer in said entitled cause, which is as follows:

48 *Answer of H. A. and J. Kohn.*

In the circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery.

The joint and several answer of Henry A. Kohn and Joseph Kohn, two of the defendants to the supplemental bill of complaint of Morris Selz and Henry Leopold, complainants:

These defendants, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such part and parts thereof as these defendants are advised is or are material or necessary for them, or any of them, to make answer unto, they, these defendants, severally answering, say 49 that they admit that on or about the 14th day of December, A. D. 1863, the said complainants filed in this honorable court their bill of complaint against Levi J. Unna, William M. Ross, John H. Ross, Leonard B. Shearer, William W. Strong, Daniel L. Shearer, and William Clarke, alleging therein the several matters and things in that respect in complainants' said supplemental bill of complaint substantially recited, and praying as therein set forth.

And for answer to the said supplemental bill of complaint, these defendants further severally admit that on the 17th day of December, A. D. 1863, the marshal for said northern district of Illinois sold all the right, title, and interest of said complainant, Henry Leopold, in the real estate in the said original and supplemental bills described as "sub-lot number two (2) of block number nineteen, (19,) of canal trustees' subdivision of fractional section number fifteen (15) addition to Chicago, except twenty by ninety-two feet from the northeast

quarter of said lot, deeded to George Arnstein, and twenty by ninety-two and one-half feet from the southeast part of said lot, deeded to Solomon Liebenstein," upon an execution in due form of law issued out of and under the seal of this honorable court on the said
50 judgment, in favor of Levi J. Unna against Henry A. Kohn
and others, in said original and supplemental bills named; and that at the sale of said premises, under said execution, the said Henry A. Kohn became the purchaser thereof for the sum of and price of two thousand one hundred and seventy-five dollars, that being the highest and best bid, and he being the highest and best bidder therefor.

And these defendants, further severally answering, admit that the said Henry A. Kohn is the same person mentioned in the said original bill of complaint, who, together with his said copartner (the defendant) Joseph Kohn, under the style of H. A. Kohn & Bro., recovered judgment against said Isidor, and levied execution upon the said goods and chattels mentioned in said original bill, and against whom the said Unna recovered judgment for $6,307 89, but these defendants, the said Henry A. Kohn of his own knowledge, and the said Joseph Kohn on his information and belief, severally deny that at or about the time of the second trial of said action of trespass the said Henry A. Kohn had any knowledge, notice, or information of the pretended agreement between said complainants of the one part, and said Unna of the other part, as alleged in said original
51 and supplemental bills of complaint.

And these defendants further severally say, that the first knowledge, notice, or information they, or either of them, had of or respecting the said pretended and fraudulent agreement, if in fact any such agreement or understanding ever was made, or had between the said complainants, or either of them, and said Levi J. Unna, and which these defendants severally expressly deny, they, these defendants, received and learned by and through the said complainant, Morris Selz, and his solicitor, Mr. Roberts, a few days before the filing of said original bill of complaint, when the said Selz and Roberts told and stated to these defendants that such an understanding was had between said Selz and Unna. And that if these defendants would assist the said complainants in the matter, they, the said Selz and Leopold, would recover back for, and compel the said defendants, William M. Ross and John H. Ross, to pay these defendants all the money which these defendants had paid, and were liable to pay on said execution, and that it should not cost these defendants or either of them one single cent in money or property so to do, but
52 these defendants, having no faith, confidence, or belief in said
statement, refused to aid, assist, or have anything to do with the said complainants in the matter; and these defendants severally as aforesaid deny that the said H. A. Kohn & Bro., or either of these defendants, at the same time as stated in said original and supplemental bills, or that they, or either of them, at any other time or place, made an agreement in all or in any respect similar to the agreement or arrangement stated in said original and supplemental bills, and

pretended and claimed therein to have been made by said complainants with said Levi J. Unna; and these defendants severally expressly deny that they, or either of them, ever made or had any agreement or understanding whatever with said Unna upon the consideration stated in said original and supplemental bills, or upon other consideration, as the said pretended agreement or understanding in said original and supplemental bills alleged, so that they, these defendants, or either of them, performed, or attempted, or undertook, or agreed to perform any such pretended agreement or understanding, upon their part, by retiring and abstaining from the further
53 defence of said suit as is pretended and claimed in said original and supplemental bills; and these defendants further severally expressly say that to their knowledge and belief no such agreement or understanding was ever had or made between the said complainants, or either of them, and said Unna, or between the said Unna and any of the parties to said action of trespass, as the pretended and fraudulent agreement set forth in said original and supplemental bill.

And these defendants, further answering, severally admit that said Henry A. Kohn did not take part in suing out the said wirt of error to the Supreme Court, nor in the proceedings therein; and these defendants say that the reason why these defendants did not take part in the suing out of said writ of error, and the proceedings thereon, is, and the fact is, they, and each of them in that respect, acted upon the advice of their counsel, and an attorney, Hon. E. Van Buren, who always advised these defendants that he did not believe that the Supreme Court would reverse said judgment, and that if the
54 judgment was affirmed and came back, he would arrange it so that these defendants would not have to pay more than one-fourth of the amount of said judgment, as he afterwards did; and these defendants further severally say they have no knowledge, only as appears from the record and proceedings thereof now in the office of the clerk of said circuit court of the United States, by whom the said writ of error and proceedings thereon was conducted; but these defendants severally deny that the same was conducted for and on behalf of said William M. Ross, John H. Ross, and said Leonard B. Shearer, as pretended and claimed in said original and supplemental bills.

And these defendants, further answering, severally deny that after the said cause was dismissed in said Supreme Court, or after the docketting or dismissal of said cause by this court on the 10th of October, 1863, or at any other time before or since said 10th day of October, the said Henry A. Kohn, or either of these defendants, believed that the assignment of said judgment from the said Unna to the said Daniel S. Shearer and William Clarke was a mere
55 cover, or that the said judgment was in fact paid by said William M. Ross, John H. Ross, and Leonard B. Shearer, or that in order to avoid being involved in litigation or harrassed by the persons seeking to enforce the collection and payment of said judgment from said H. A. Kohn & Bro., these defendants entered into an agreement with one John S. Paine, and Messrs. Merrick & McKinnon, the

attorneys employed to enforce the collection of said judgment, as in said supplemental bill stated; and these defendants further severally deny that, in enforcing payment of said judgment, the said Merrick & McKinnon were in fact acting for said William M. Ross, John H. Ross, and Leonard B. Shearer, and not for said Daniel L. Shearer and William Clarke. And these defendants, upon their information and belief, say, and so state the fact to be, that said Merrick & McKinnon, in enforcing the payment of said judgment from the defendants therein, acted, and were acting, solely and alone for said Daniel L. Shearer and William Clarke, and for no other person or persons. And these defendants further severally say, and state the fact to be,
the said Henry A. Kohn, answering of his own knowledge, and
56 said Joseph Kohn upon his information and belief, that the
facts in relation to the agreement of these defendants to pay their one-fourth share of said judgment are as follows: Mr. Paine, of Shearer, Paine & Strong, came into our store, and had a conversation with defendant, Henry A. Kohn, after the case of Unna *vs.* H. A. Kohn and others, came back from the Supreme Court, and wanted to know if said Henry A. Kohn was one of the defendants in said suit, and what he would do about it. That said Henry A. Kohn then told said Paine that we were willing to pay our share of the judgment at any time. That said Paine then said that he was acting for Daniel L. Shearer, of New Orleans, in the matter, and that he would take it if all the rest would do the same. That said Henry A. Kohn then went to the office of our counsel, Mr. Van Buren, and told him to manage it for us. That said Van Buren and said Henry A. Kohn then went to the office of Merrick & McKinnon, and wanted to settle our part of the said judgment, and the said Merrick & McKinnon refused to
receive it unless the whole judgment was settled; at that time
57 there was present in Merrick & McKinnon's office, Mr. Van
Buren, Henry A. Kohn, Mr. Paine, and Merrick & McKinnon. The marshal then came to our store, and demanded the whole judgment. Said Henry A. Kohn then told the marshal that our agreement was that Ross & Co. should pay one-fourth part of the judgment, Kohn & Bro. one-fourth part, Shearer, Paine & Strong one-fourth part, and Selz & Cohen one-fourth part. The marshal then received from us, through Henry A. Kohn, what was then supposed to be one-fourth part of the said judgment. It being afterwards found that the payment so made was not one-fourth part of said judgment, we subsequently paid another sum, so as to make said one-fourth; and these defendants say that the said arrangement to bid, in the said hereinbefore described premises, when sold on said execution, was made by said Henry A. Kohn, with his counsel, Mr. Van Buren, who settled the same with Mr. McKinnon, the attorney then acting for said Daniel L. Shearer and William Clarke, the owners of said judgment; and that in accordance with said agreement and upon the advice of
his said counsel, the said Henry A. Kohn attended said sale,
58 and bid in and paid for said premises, or interest sold, the sum
of $2,175, as he well and lawfully might.

And these defendants, further answering as aforesaid, severally say that by these terms of the agreement so as aforesaid made these defendants agreed to pay, and did pay, as their share of said judgment the sum of $2,136 96 in cash, and the said Henry A. Kohn for himself agreed to purchase said real estate when levied on and sold under said execution, and in accordance with his said undertaking and agreement he, said Henry A. Kohn, did purchase and pay for said real estate when sold under said execution the sum of $2,175, as he well and lawfully might.

And these defendants, further severally answering, admit that by the terms of said agreement it was understood and agreed that when these defendants paid their one-fourth part of said execution, and the said Henry A. Kohn purchased and paid for said real estate when sold under said execution, the said judgment should be, and, as these defendants are advised, the same was, entered, satisfied, as to the said H. A. Kohn & Bro.

And these defendants further severally admit that at the
59 time of the making of said agreement it was further understood, arranged, and agreed that said John H. Ross and William M. Ross, and the firm of Shearer, Paine & Strong, and the firm of Selz & Cohen, and the firm of H. A. Cohn & Bro. should each pay one-fourth of said judgment, and that said Henry A. Kohn should realize out of the said real estate the amount to be by him paid therefor.

And these defendants, upon their information and belief, say that said William M. Ross and John H. Ross, and said Shearer, Paine & Strong, have each paid their one-fourth part of said judgment.

And these defendants, further severally answering, deny that pursuant to the agreement mentioned and erroneously stated in said supplemental bill of complaint, the said H. A. Kohn & Bro. paid to said Merrick & McKinnon the said sum of $2,136 97; but these defendants do say that pursuant to the agreement in this their answer stated these defendants did pay to the marshal of said northern district of Illinois as their one-fourth of said judgment the said sum of $2,136 96.

And these defendants severally admit that the said real estate was levied upon and bid in at the sale thereof, under said execution, by said Henry A. Kohn for the sum of $2,175, and that said
60 Henry A. Kohn will be, and was, entitled to a deed therefor on the 17th day of March, 1865, the said Henry A. Kohn having purchased and paid for the same in good faith upon the advice of his counsel and after this honorable court refused to stay the sale thereof upon application for injunction as prayed for in complainants' said original bill of complaint.

And these defendants, further answering upon their information and belief, severally deny that the matters and things stated and charged in complainants' said original bill of complaint are substantially or in any respect true; but these defendants, upon their said information and belief, say and charge that the matters and things stated and charged in said complainants' original and supplemental bills, excepts as to such parts thereof as are admitted by these defendants in this their answer are substantially if not wholly untrue and false.

And these defendants, further answering, severally deny that there was any such agreement as erroneously and wrongfully stated in said supplemental bill of complaint between said H. A. Kohn & Bro. and said Paine and Merrick & McKinnon; and these defendants
61 say that the only agreement that they or either of them made with respect to paying their said one-fourth of said judgment and purchasing said real estate was had and made as heretofore in this their answer stated and set forth.

And these defendants, the said Henry A. Kohn of his own knowledge, and the said Joseph Kohn on his information and belief, further answering severally, expressly deny that said Henry A. Kohn was, before the filing of said original bill of complaint, informed by said William M. Ross that the said defendants in said judgment or some of them had paid the same for the face thereof without interest, and caused the same to be assigned to said Shearer and Clarke, as stated and pretended in said original and supplemental bills.

And these defendants, further severally deny all and all manner of unlawful combination and confederacy wherewith they or either of them are by said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said supplemental bill of complaint contained material or necessary for these defendants, or either of them, to make answer unto and not herein and
62 hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are, and each of them is, ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be here dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, &c.

HENRY A. KOHN.
JOSEPH KOHN.

JNO. J. MCKINNON,
Sol. and of Counsel.

In the circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

MORRIS SELZ *et al.*
vs.
LEVI J. UNNA and others.

Henry A. Kohn and Joseph Kohn, being first duly sworn, say they are two of the defendants in the above entitled-cause named; that they and each of them have read the foregoing answer, and
63 know the contents thereof; that they severally signed the said answer as their answer to the supplemental bill of complaint of said complainants, filed in said cause, and that the said answer is true in all the matters and things therein stated and answered of

of their own knowledge, and as to the matters and things therein stated and answered on their information and belief, they and each of them believe it to be true.

HENRY A. KOHN.
JOSEPH KOHN.

Subscribed and sworn to before me, at Chicago, Illinois, this first day of April, 1865.

[SEAL.] **PHILIP A. HOYNE,**
U. S. Commissioner, North. Dist. Illinois.

Indorsed: Filed May 16, 1865.

WM. H. BRADLEY, *Cl'k.*

64 On this day, to wit, the 20th day of June, A. D. 1865, came said complainants, by their solicitors, and filed in said clerk's office their replication in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

In the circuit court, in chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

MORRIS SELZ *et al.*
vs.
LEVI J. UNNA *et al.*

And now come the complainants, and for replication to the answers of the said Henry A. Kohn and Joseph Kohn say, that said complainants ought not to be barred from having the relief prayed for in their original and supplemental bills by reason of anything in said answers, and that the matters and things in said answers contained are untrue and insufficient, and the matters and things in said bill contained are good and true, certain and sufficient, all which they will aver, maintain, and prove as this honorable court shall direct, and therefore they pray as in bill. 65

GOOKINS & ROBERTS,
Sols. for C'p'ts.

Indorsed: Filed June 20, 1865.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 5th day of January, A. D. 1866, in the record of proceedings of said court, in chancery, in said entitled cause is the following entry, to wit:

MORRIS SELZ and HENRY LEOPOLD
vs.
LEVI J. UNNA, WILLIAM M. ROSS, JOHN H. Ross, Leonard B. Shearer, William M. Strong, Daniel L. Shearer, and William Clark, *et al.*
Chancery.

Now come the parties, by their solicitors, and by agreement this cause is set down for hearing upon the bill of complaint, answers, replications, exhibits, and proofs on file herein; and the court after hearing the arguments of counsel, and not being fully advised in the premises takes time to consider.

66 On this day, to wit, the 26th day July, A. D. 1866, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

Morris Selz and **Henry Leopold**
vs.
Levi J. Unna, **William M. Ross**, **John H. Ross**, Leonard B. Shearer, William M. Strong, Daniel L. Shearer, and William Clarke, Henry A. Kohn, and Joseph Kohn. } Chancery.

The court having considered and being now fully advised upon the matters heretofore submitted herein, order that the bill of complaint in this cause be dismissed at the costs of the complainants.

It is thereupon considered and adjudged by the court that the defendants do have and recover of the complainants their costs and charges by them about their defence in this behalf expended, amounting to the sum of eighty-one dollars and ten cents, and that they have execution therefor. And thereupon the complainants pray an appeal to the Supreme Court of the United States, which is granted upon filing a bond by Max A. Meyer and Isaac Marks, in the
67 penal sum of two thousand dollars, conditioned according to law, within ten days from this date.

On this day, to wit, the 20th day of June, A. D. 1865, the following report of the examination by Henry W. Bishop, jr., esq., master in chancery, was filed in said clerk's office in said entitled which said report, together with the exhibits therein referred to, and therein attached, is in the words and figures following, to wit:

68 *Examination before H. W. Bishop.*

Circuit court of the United States, northern district of Illinois.

Morris Selz *et al.*
vs.
Levi J. Unna *et al.*

In pursuance of an order made in the above-entitled cause, on the 29 day of Jan'y, 1864, and June 23, 1864, wherein and whereby it was referred to the undersigned, a master in chancery of said court, to take proofs and report, I, Henry W. Bishop, master in chancery aforesaid, do hereby report that on the 21st day of May, A. D. 1864, and at subsequent times hereinafter mentioned, I was attended by Mess. Gookins & Roberts, solicitors for the complainants in said case, who produced before me William Clark, William M. Ross, E. Van Buren, W. W. Strong, Jos. E. Gary, Henry A. Kohn, Eugene C. Long, witnesses in said case, and by J. J. McKinnon, esq., solicitor for the defendants, and the said witnesses having been by me
69 first duly cautioned and sworn to make true answer to such questions as should be put to them under the direction of the said master upon examination, did thereupon answer as follows:

Testimony of Wm. Clark.

Examination of William Clark:

Int. 1. What is your name, age, and residence, and occupation?

Ans. My name is William Clark. I reside in Chicago, and am wholesale grocer.

Int. 2. Are you acquainted with Daniel M. Shearer? and if yea, when did you first make his acquaintance?

Ans. I am. I made his acquaintance about October, 1860, in the city of Chicago.

Int. 3. About what time?

Ans. In the early part.

Int. 4. Was it before the assignment of the judgment in the bill of complaint (mentioned) to yourself and said Daniel? and if yea, how long before?

Ans. It was before, about a couple of weeks.

Int. 5. Where did the said Daniel reside at that time?

Ans. I don't know that he was at that time a resident of Chicago. I met him here. He spoke something of going to New Orleans?

Int. 6. Was he not then residing in New Orleans?

Ans. I don't know.

70 How long had he been in Chicago previous to your acquainance with him?

Ans. I don't know.

Int. 7. Were you introduced to him? and if yea, by whom, when, and where?

Ans. I was introduced to him by a man by the name of Paine, I think; but I don't know where.

Int. 8. Was the introduction a casual one, or had it reference to the matter of his judgment assigned to you and said Daniel?

Ans. It first appeared casual, afterwards he suggested purchasing the judgment.

Int. 9. Where was that suggestion made?

Ans. I don't remember.

Int. 10. State substantially what he said to you at the time of making said suggestion in reference thereto.

Ans. He said that there was a good thing in it, that money could be made by it.

Int. 11. Is that all that you now remember that he said to you?

Ans. He said that he was about leaving for New Orleans, and that Mr. Paine was going to Boston, and would correspond with me in the matter. in respect to his (Shearer's) interest.

Int. 12. Can you remember anything further that he said in regard to said judgment?

Ans. Only that he would leave his funds with Paine to meet his share of the purchase.

71 Int. 13. Did you then agree with him to purchase the judgment on joint account?

Ans. I did.

Int. 14. Did he then tell you how much the judgment was?

Ans. I think he did; about six thousand dollars.

Int. 15. Did he state to you how much it could be bought for?

Ans. I think he did; about $32 or $3,300 each.

Int. 16. Did he tell you whether that was one-half of the face of the payment, with or without interest?

Ans. I don't remember.

Int. 17. Did he tell you whether a writ of error had been prosecuted from the Supreme Court of the United States to reverse the said judgment, and that said writ was then pending and undetermined in said Supreme Court?

Ans. I don't think he did.

Int. 18. Did you then know that such a writ of error had been prosecuted, and was then pending and undetermined?

Ans. Not until afterwards.

Int. 19. What, if anything, did you know in respect to said judgment before your said interview with Shearer?

Ans. That such a judgment was to be bought, and that there was money in it.

Int. 20. Where did you obtain such information?

72 Ans. On the street.

Int. 21. From whom?

Ans. An acquaintance of mine.

Int. 22. Will you please name the person or persons?

Ans. William W. Ross.

Int. 23. How long was it before your said interview with Daniel L. Shearer, that Ross told you that the judgment was to be bought, and that there was money in it?

Ans. I don't remember.

Int. 24. About how long, as near as you can now state from recollection, you had your talk with Ross before the one with Shearer?

Ans. A week or two, I think.

Int. 25. State all that Ross said to you at that time in respect to said judgment.

Ans. Simply advising me to purchase a half interest; that I would make a good thing by it, that is as near as I can recollect, as it was a judgment against himself, his brother, John Kohn, and others; that I was secure in the purchase; that is as far as I can remember.

Int. 26. Did he tell you what court the judgment was in?

Ans. I don't remember.

Int. 27. Did he tell you how much you could get it for?

About $32 or $3,300, I think. (One half of it.)

Int. 28. Did he tell you that it would require the cash down?

73 Ans. That was understood.

Int. 29. Who was this Mr. Paine who was present with you at the said interview with Daniel L. Shearer?

Ans. He was introduced to me by John or William Ross, I don't know which; I think on the street or in their store, some time in the autumn of 1860.

Int. 30. When did you first talk with said Paine in respect to said judgment?

Ans. About the time Shearer left instructions with him to attend to his, Shearer's, interest.

Int. 31. State what conversation you and Paine had in respect thereto.

(Objected to.)

Ans. That he would meet me at Beckwith's office, where the judgment was to be presented by, I think, one Unna, and payment to be made on assignment of same to us by said Unna.

Int. 32. Was that all the conversation you had with said Paine in respect thereto?

Ans. That he was leaving for Boston; that I would see and have Beckwith attend to it.

Int. 32. Did he tell you that he would leave Shearer's share of the money with Beckwith?

Ans. His share was paid before he left here for Boston.

Int. 33. Did you and Paine agree as to the proportion each was to pay?

Ans. Yes, sir; half each.

Int. 34. Where was that agreement made?

74 Ans. On the street.

Int. 35. Did you meet said Unna at Beckwith's office? and if yea, who was present?

Ans. I did; Paine, myself, and Beckwith's clerk, and Unna were present.

Int. 36. Was the money then paid over to Unna?

Ans. Yes, it was.

Int. 37. Was any one present acting for Unna at that time?

Ans. I don't remember.

Int. 38. What kind of money was paid?

Ans. Currency.

Int. 39. Was any portion of it paid in checks on any banking house?

Ans. No.

Int. 40. Was it all paid in bank bills?

Ans. Yes.

Int. 41. What was Paine's first name?

Ans. I don't remember.

Int. 42. Was he a member of the firm of Shearer, Paine & Strong?

Ans. I think I was informed he was or had been.

Int. 43. Who so informed you?

Ans. One or the other of the Rosses, Wm. M. or John H. Ross.

Int. 44. Did you ascertain, before taking the assignment of said judgment, how you could make money by purchasing the one-half of the judgment?

75 Ans. Yes; by interest and other matters accruing from its nature.

Int. 45. What other matters did you ascertain you could make money out of?

Ans. I did not inquire minutely.

Int. 46. What interest do you refer to?

Ans. Ten per cent.

Int. 47. Did you understand that the judgment drew interest at the rate of ten per cent. per annum?

Ans. I was so informed.

Int. 48. Who by?

Ans. By William M. or John H. Ross.

Int. 49. Can you mention the other matter out of which you were to make money beside the interest?

Ans. I did not ask at the time.

Int. 50. You bought it wholly, then, upon the representations of Wm. M. and John H. Ross?

Yes, and Shearer.

Int. 51. In what business were you at that time engaged?

Ans. In commission business.

Int. 52. Did you take your portion of the cash paid therefor out of your business, or how otherwise was it obtained?

Ans. No; I borrowed it.

Int. 53. From whom?

Ans. The Marine Bank of Chicago.

Int. 54. Did the bank discount your note for the amount?

76 Ans. They did; two notes.

Int. 55. Were there any other parties on those notes? and if yea, who?

Ans. No other parties.

Int. 56. When and on what time were the notes drawn, and where payable?

Ans. They were dated October 18, 1860—one at 6 mos. and the other at 9 mos. I don't know that they were payable at any particular place.

Int. 57. To whose order were they made payable?

Ans. To my own.

Int. 58. Did you indorse them?

Ans. Yes, I did, in blank, at the time I made them.

Int. 59. Were those notes paid at maturity?

Ans. I had no notice of them; was prepared to pay them; made no efforts to obtain their whereabouts in the absence of notice.

Int. 60. Had they been paid?

Ans. They were handed to me by Mr. Beckwith, and I destroyed them.

Int. 61. Did you ever pay them?

Ans. Mr. Beckwith, on delivering or returning the notes, demanded no payment.

Int. 62. When did you first see said notes after they were discounted?

Ans. On their being delivered to me by Mr. Beckwith, as above stated.

Int. 63. Did you destroy them?

Ans. Yes.

77 Int. 64. Did you make application to the Marine Bank for the discount of said notes?

Ans. Yes, sir.

Int. 65. To what person did you make application?

Ans. To the note teller; I don't remember his name.

Int. 66. Did you know him?

Ans. By sight; we did our business there.

Int. 67. Did the note teller consent to discount your said notes upon your application only?

Ans. Yes, after returning from the cashier or the president's room with said notes.

Int. 68. Had you talked with any person before procuring said discount with respect thereto?

Ans. I think Ross said I would have no difficulty in getting my paper discounted at the Marine Bank. I think it was Wm. M. or John H. Ross, I can't remember which.

Int. 69. Did he tell you that arrangements had been made, or would be made, with the Marine Bank for discounting your paper?

Ans. Only that one or the other thought I would have no difficulty on application.

Int. 70. Was that all that they, or either of them, said to you in respect to said discount?

Ans. I think that was all.

Int. 71. Have you paid out any money of your own, other than the discount on the notes aforesaid, with respect to this judgment?

Ans. No; but lots of time.

78 Int. 72. Have you collected any part of said judgment?

Ans. I have, between six and seven hundred dollars.

Int. 73. From whom?

Ans. John J. McKinnon.

Int. 74. When did you collect the same from Mr. McKinnon?

Ans. During the past winter.

Int. 75. From which of the defendants was said money collected?

Ans. I have forgotten the name.

Int. 76. Was the name Henry A. Kohn?

Ans. I don't remember.

Int. 77. What did you do with the money so collected?

Ans. I gave it to my book-keeper.

Int. 78. What is the name of said book-keeper?

Ans. Donald McIntosh.

Int. 79. Where is he?

Ans. In my employ.

Int. 80. Has any part of that money been paid to William M. Ross or John H. Ross?

A. No.

Int. 81. Do you still hold it?

Ans. It was deposited to my bank account.

Int. 82. Do you hold that money in trust for William M. Ross or John H. Ross, or either of them?

Ans. I do not.

Int. 83. Have they, or either of them, or any person in
79 their behalf, received any part thereof?

Ans. Not that currency or check.

Int. 84. What do you mean by not that currency or check?

Ans. I mean the currency or check received from Mr. McKinnon.

Int. 85. Have they, or either of them, or any person in their behalf, or that of either of them, received other money, or check for money, or other thing of value, in lieu of said collection?

Ans. I gave William Clark & Co.'s check to William M. Ross for the amount received from Mr. McKinnon.

Int. 86. Why did you give such check to William M. Ross?

Ans. He asked me for that amount.

Int. 87. Did he ask you to loan it to him?

Ans. Simply that he would make it all right.

Int. 88. Was that a check for money?

Ans. Yes, sir; for currency.

Int. 89. When did you give him that check?

Ans. I think the same day that I received the money from Mr. McKinnon.

Int. 90. Did you employ counsel at the time you took the assignment of said judgment?

Ans. Mr. Paine and myself left the matter to be straightened up by Mr. Beckwith.

Int. 91. Did you retain Mr. Beckwith to act on your behalf?

Ans. Yes, with Mr. Paine, as agent for Mr. Shearer.

80 Int. 92. Have you ever paid Mr. Beckwith for his professional services in that behalf?

Ans. He has presented no bill to me as yet.

Int. 93. Have you directed any person to collect the said judgment from either William M. Ross, John H. Ross, Leonard B. Shearer, or William W. Strong?

Ans. I left the matter entirely in the hands of my counsel.

Int. 94. Name said counsel.

Ans. Corydon Beckwith.

Int. 95. Who prepared your answer filed in this cause?

Ans. I think it was Mr. Beckwith.

Int. 96. Have you any other counsel than Mr. Beckwith?

Ans. I have employed none.

Int. 96. Is not John J. McKinnon here present at your examination? and have you not consulted with him during the examination, and at his office previous thereto. with respect to the examination?

Ans. He is here present. I have consulted him during this examination, and previous thereto with respect to this examination.

Int. 97. Do you expect to realize anything of value from the said judgment for your sole use and benefit?

Ans. I may.

Int. 98. Have you up to this time?

81 Ans. Not yet.

Int. 99. In what way may you realize?

Ans. I don't know yet.

Int. 100. Are you the bona fide owner in your own right of any part of the said judgment?

Ans. Well, my notes I have received and destroyed them, and understand Mr. McKinnon to be acting for Mr. Beckwith as regards my interest in the matter, which I presume has been finally adjusted in view of the surrender of my notes by Mr. Beckwith.

Int. 101. What do you mean by "which I presume has been finally adjusted?"

Ans. From the fact of receiving my notes.

Int. 102. Do you mean that by receiving your notes you have ceased to have any further interest in the judgment?

Ans. I think so.

Int. 103. Did you sell your interest in the judgment to any person?

Ans. No.

Int. 104. Did you transfer it to any person?

Ans. No.

Int. 105. Did you ever have any bona fide interest in *in* said judgment other than that which you now have?

Ans. Of course I had, having discounted my notes for my share.

Int. 106. Is that all?

82 Ans. I don't know that I can say anything more; if the notes had been presented I should have paid them.

Int. 107. Did you ever authorize any person to dispose of your interest in said judgment?

Ans. No.

Int. 108. Have you talked with any person in respect to said judgment since you gave the said check to William M. Ross?

Ans. Not until I received the notice yesterday to appear at this examination.

Int. 109. Who has directed Mr. Beckwith with respect to collecting said judgment?

Ans. Paine and myself left the matter entirely in his hands, without naming any particular parties from whom it was to be collected.

Int. 110. Have you at any time since the interview at the office of Beckwith, when the judgment was transferred, directed Mr. Beckwith, or any person, with reference to collecting the judgment?

Ans. No, but understood from Mr. McKinnon he was attending to the matter.

Int. 111. When did you so understand?

Ans. Some time during the past winter, I don't remember whether it was before January or after.

Int. 112. Did McKinnon pay you the money spoken of before or after your answer was filed in this cause?

Ans. Before, I think; am not certain.

83 Int. 113. You have stated that you thought upon receiving your notes you ceased to have any further interest in the judgment?

Int. 114. Who did you understand succeeded to your interest therein?

Ans. I made no inquiries, I don't know any further about it.

Int. 115. When was it Mr. Beckwith returned or delivered your notes to you?

Ans. I think five or six weeks ago, three, four, or five weeks ago?

Int. 116. Did they contain a stamp made by the bank showing payment?

Ans. I don't remember, did not examine them.

Int. 117. What did Mr. Beckwith state to you when he delivered the notes to you?

Ans. Nothing whatever touching this transaction.

Int. 118. Did you never inquire from any person as to the whereabouts of your notes after the discount, before they were handed you by Mr. Beckwith?

Ans. Not until early the past winter, I learned they were in Mr. Beckwith's possession.

Int. 119. Have you ever had any conversation or correspondence since October, 1860, with Daniel L. Shearer, or said Paine, with respect to the said judgment?

Ans. One or two letters from Paine, and two or three interviews in Chicago, simply inquiring of each other as to what progress Beckwith was making.

84 Int. 120. Where are those letters?

Ans. I think I destroyed them, being of no importance in this transaction.

Int. 121. Where are William M. Ross, John H. Ross, Leonard B. Shearer, and William W. Strong, and what has been their business since October, 1860?

Ans. I do not know William W. Strong; William M. and John H. Ross have been in the dry goods business, and now are in Chicago; Leonard B. Shearer, I don't know where he has been or his business.

Int. 122. Could not the said judgment have been collected at any time since October, 1860, from William M. Ross and John H. Ross?

Ans. I presume they were capable of paying said judgment, but left the matter entirely in Mr. Beckwith's hands.

Int. 123. Have you ever talked with defendant Kohn about it?

Ans. No.

Further examination of witnesses was adjourned to Saturday, the 28th of May, 1864.

H. W. BISHOP, Jr.,
Master, &c.

85 Examination of William Clark resumed, May 28th, 1864:

Int. 124. What was the amount of the said two notes, respectively, discounted at the Marine Bank?

Ans. One for twelve hundred seventy-three and 14-100 dollars, at 6 mos., and the other for two thousand dollars at 9 mos.

Int. 125. Did you have any other notes discounted at the Marine Bank at that date?

Ans. No.

Int. 126. Did you have any others discounted there during the month of October, 1860?

Ans. No.

Int. 127. What rate of interest was charged you by the Marine Bank on said notes?

Ans. They were bearing ten per cent. per annum.

Int. 128. Did the bank take the interest from the proceeds, or was that added to the amount of the notes?

Ans. I received the face of the notes without any deduction of interest, (the amount of the notes I mean.)

Int. 129. Were your conversations, in respect to said judgment, generally with Wm. M. Ross or John H. Ross?

Ans. My conversations were about the same with both.

86 Int. 130. You state that you have collected between six and seven hundred dollars on the said judgment, can you state the exact amount that you have received thereon?

Ans. I think about six hundred and forty dollars and ninety-six cents, ($641 96.)

Int. 131. Will you please state the exact date when you received said amount?

Ans. During the past winter; don't remember the date.

Int. 132. Did you not receive anything on said judgment in the month of October, 1863?

Ans. No.

Int. 133. Did you not receive anything thereon prior to the month of December, 1863?

Ans. I don't think I did.

Int. 134. Do you mean to say that six hundred and forty dollars and ninety-six cents is the full amount that you have received on said judgment at any time?

Ans. It is all that I have received as yet.

Int. 135. What did Jno. J. McKinnon state to you at the time he paid to you said sum?

Ans. I understood he was to pay me the balance when collected.

Int. 136. Was that sum paid you before or after the 17th of December, A. D. 1863?

Ans. I don't remember.

Int. 137. Was this money received from Mr. McKinnon before or after Mr. Beckwith surrendered you your notes?

87 Ans. Before.

Int. 138. Did you understand at the time Mr. Beckwith surrendered your notes, as stated by you, that the judgment had been fully paid?

Ans. I did not inquire.

Int. 139. Did you have any information from any person at that time in that regard?

Ans. No. I presume the matter was settled by Mr. McKinnon.

Int. 140. What do you mean by settled in your last answer?

Ans. That the parties named in the judgment had paid their pro rata shares.

Int. 141. What did you mean, in answer to the 103d interrogatory, "that you presumed your interest in the matter had been finally adjusted in view of the surrender of your notes by Mr. Beckwith?"

Ans. From the fact of having received the notes, and learned that only six per cent. was collected instead of ten, and expecting to find full accounts in Mr. McKinnon's hands, upon whom I had not as yet called for a settlement.

Int. 142. What connection would the surrender of your notes have with the final adjustment of your interest in the matter?

Ans. Nullifying my responsibility for the payment of said notes.

88 Int. 143. Has Mr. McKinnon conversed with you since this examination commenced with respect thereto?

Ans. Nothing more or less than a casual remark.

Int. 144. Have you inquired of him whether he has any money or other property collected on the said judgment due you thereon?

Ans. No; but understand that he has some interest to settle with me.

Int. 145. Who did you understand that from, and to what interest do you allude?

Ans. From Mr. McKinnon; and interest on the judgment.

Int. 146. Do you understand that there is due you some interest on the judgment? and if so, how much?

Ans. I do. Don't know the amount.

Int. 147. Did you understand that there was nothing due you on the principal?

Ans. I have not inquired.

Int. 148. How came you to inquire about the interest and not the principal?

Ans. Simply by asking Mr. McKinnon.

Int. 149. When did you learn first that "the parties named in the judgment" had paid their pro rata share?

Ans. I supposed so on the surrender of the notes by Mr. Beckwith.

Int. 150. What reason had you to suppose so? State any
89 fact that induced you to suppose so.

Ans. I presumed Mr. McKinnon had informed Mr. Beckwith that the matter was settled up. I have no fact.

Int. 151. Did you know that there was a sale of property under an execution issued on said judgment, made on the 17th of December, 1862, to Henry A. Kohn?

Ans. I think I heard Mr. McKinnon about his giving instructions to levy on some property; but did not inquire into it particularly.

Int. 152. You have not given much attention to the matter of this judgment, have you?

Ans. No. Finding it to be unnecessary, the matter being in my attorney's charge.

Ans. 153. Describe the personal appearance of this Mr. Paine, who acted as the agent of Daniel L. Shearer?

Ans. Medium height, thin visaged, think he has black hair.

Int. 154. Where was he living in October, 1860?

Ans. I think he was here temporarily attending to some business. I don't know where he was residing.

Int. 155. Do you understand, from Mr. McKinnon, that he was acting as the attorney of Daniel L. Shearer, as well as yourself in the collection of this judgment?

I made no inquiry.

WM. CLARKE.

90 Subscribed before me, May 28, 1864,

H. W. BISHOP, Jr.,
Master, &c.

91 *Testimony of Wm. M. Ross.*

Examination of William M. Ross, May 30, 1864:

Int. 1. What is your name, age, and residence?

Ans. My name is William M. Ross; aged 35 years, and am a merchant, residing in Chicago.

Int. Were you one of the defendants in an action of trespass brought in the circuit court of the United States for the northern district of Illinois, wherein one Levi J. Unna was plaintiff, and yourself and others, defendants, in which judgment was rendered March 5, 1859, for $6,307 89 and costs?

Ans. I was, I suppose.

Int. 3. Had you any partner then, and what was the style of your firm, and how long did it continue?

I had a partner then, John H. Ross, and the style of the firm was Wm. M. Ross & Co.

Ans. It continued till January, 1864.

Int. 4. Were you acquainted with Leonard B. Shearer and William W. Strong? and if yea, state whether or not they were copartners in business about the time of the rendition of said judgment, and whether or not they had a partner, and the name of said partner?

92 Ans. I was not acquainted with the individual members of the firm, but met some gentleman of that firm or representing that firm. I can't remember who it was.

Int. 5. State whether you had any conversation with any member of said firm of Shearer, Paine & Strong with respect to said judgment; and if yea, what? and state what either of you did in respect to it.

Ans. I had a conversation with a gentleman representing said firm in relation to this judgment, the result of which was that we consulted with counsel, and appealed the case.

Int. 6. State whether you prosecuted the said appeal; and if not why?

Ans. We left the whole matter in charge of our counsel, Mr. Beckwith and Mr. Merrick. We left the matter in charge. What they did I don't know, except that they decided to appeal. I had confidence in them.

Int. 7. Do you remember of introducing William Clark to Daniel L. Shearer or J. S. Paine, with a view to their taking an assignment of this judgment?

Ans. No, sir; I don't recollect doing so.

Int. 8. Do you remember conversing with William Clark in respect to said judgment, and taking an assignment thereof to him, in part?

93 Ans. I had a conversation with Mr. Clark in relation to this judgment.

Int. 9. When was that?

Ans. I could not tell you. It was immediately after I learned these men were going to levy this judgment.

Int. 10. Did you about that time see Daniel L. Shearer, one of the persons to whom said judgment was assigned?

Ans. I saw frequently about that time the gentleman whom I alluded to as representing the house of Shearer, Paine & Strong. I did not at that time know about the assignment of the judgment.

Int. 11. Did you or your firm keep a bank account in Chicago in the year 1860 and 1863? and if yea, what bank?

Ans. We did, in the Marine Bank, in 1860 and in 1863, with F. Granger Adams.

Int. 12. What was your custom in paying out sums of money—one thousand dollars, and upwards. Did you pay it out at your counter and in checks?

Ans. Almost invariably in checks.

Int. 13. State whether in the matter of settling said judgment you acted for your firm.

Ans. I alone acted in the matter for our firm. I did not consult John H. Ross about it.

94 Int. 14. Did you, or not, pay out any money on the said Unna judgment, Oct. 22, or December 17, 1863, or thereabouts?

Ans. I paid it some time last winter. I paid it at the time the judgment was settled up, I believe; at the time the others paid.

Int. 15. Have you now your bank check-book before you for 1863? if yea, do you find any memorandum of said payment?

Ans. I have one check-book, in which I do not find it; but the money was paid either by check or in currency by me.

Int. 16. Did your firm have any other check-book for the year 1863?

Ans. They had not? but I had a private check-book and funds of my own. I kept my own business entirely separate from theirs.

Int. 17. About how much money was paid out by you or your firm on said judgment?

Ans. I paid out our share, I can't remember the amount; it was our proportion. They all paid but Kohn, who agreed to pay in a few days.

Int. 18. Where was this judgment made, and to whom was it made?

95 Ans. I recollect it was paid at the marshal's office, and to the marshal, or the party whom my counsel advised me had a right to take it. I don't remember whether I paid to Mr. McKinnon or the marshal.

Int. 19. Was the entry of this payment, or payments, made in the books of William M. Ross and Co., or in your own private books?

Ans. I could not answer that without looking through.

Int. 20. Will you examine the books of your firm and your own private books, and produce at a future examination such book or books containing an entry of such payment, and all payments made by you on account of such judgment?

Ans. I will if such entries are made. I find in examining the bank check-book of Wm. M. Ross & Co., which I hold in my hand, Oct. 23, 1863, a check for $2,500 drawn, part of the proceeds of which may possibly have been used in payment of our share of this judgment. I had large transactions outside of our business, for which I was in the habit of drawing checks without specifying the purposes for which they were used.

Examination of Wm. M. Ross continued to Oct. 5, by consent.

H. W. BISHOP, Jr.,
Master, &c.

96 Examination of Wm. M. Ross resumed, Oct. 5, 1864:

Int. 21. Have you, since your last examination, examined your books for the entries of payments made by you on said judgment? If yea, what do you find?

Ans. I do not find any entries specifying any particular sum for that specific purpose, but find several amounts or entries, parts of which might have been used for that purpose; I recollect payments having been made for that purpose.

Int. 22. What account would you charge the payment of said judgment against, if any entry were made thereof in your books?

Ans. If any entry were made at all, it would probably have been made to expense account or Unna judgment, but it might have been an individual transaction, of which there was no record whatever.

Int. 23. Was it not a judgment against all the members of the firm of Wm. M. Ross & Co., and was not payment made on behalf of the firm and out of the funds of the firm?

The judgment was against the firm of W. M. Ross & Co., but subsequently it was an individual matter.

Int. 24. What do you mean by "subsequently it was an individual matter?"

Ans. The fact is, that the judgment was against Wm. M. 97 Ross & Co., but I had some difficulty with my brother, and I assumed the whole thing and gave him a bond of indemnity.

Int. 25. Is there no entry on the books of Wm. M. Ross & Co., or in your own private book, respecting the payment of money on said judgment?

Ans. I cannot find such entry, but I have large transactions outside of my firm business, of which I keep scarcely any record; the books are here present, and can be examined. These outside transactions amounted, during the last year, to thirty thousand dollars.

Int. 26. Did you have any conversation with William Clark with reference to his becoming one of the assignees of said judgment, about the month of October, 1860?

Ans. I had a conversation with Mr. Clark, the tenor of which was, that I believed this judgment could be bought cheap, as we knew the whole matter to be a swindle, and intended appealing it, but being business men and not wishing to be bothered with this thing, as parties would pay up rather than have trouble with it, I advised him to buy it, and that he would make money out of it. That was the tenor of the conversation.

Int. 27. Did he then consent to buy it, or to become a party to the purchase of the judgment?

Ans. There was no consent about the matter; I merely gave

98 him friendly advice. He subsequently told me he did buy it.

Int. 28. Did you receive any money from either Messrs. Merrick or McKinnon, or said Clark, in respect of said judgment? If yea, when, and how much?

Ans. I received moneys from Messrs. Merrick and McKinnon frequently of different amounts, and for different purposes in settlement of matters, of which I have no record or recollection.

Int. 29. Did not said Clark pay you, during the last winter, six hundred dollars and upwards, which had been collected on the said judgment and paid to him?

Ans. Mr. Clark has paid me money at various times during said time, of which I have no record, and various amounts; I have no record of any such payment, nor do I know of any such payment.

Int. 30. Have you received, during the past year, any money from either Messrs. Merrick or McKinnon? and if yea, on what account?

Ans. I have received of, and paid to, Messrs. Merrick & Merrick several large amounts on account of my individual transactions, of which I have no record.

Int. 31. Have you not received from them money collected on said judgment?

99 Ans. I have no record of the purposes for which the money was paid; they never told me in paying me the money it was for that purpose; the checks or currency which they paid me did not specify for what particular account they were paid; they had several important business matters of mine in charge, for which they paid me money frequently.

Int. 32. Were you not informed that they had collected money on said judgment, and did you not understand that in these payments by them to you you were receiving portion of the proceeds of such collection?

Ans. I paid my share of the money, and knew I then had paid their share of the money, and in that way understood the judgment was collected. They never paid me money, stating it was for that purpose, and I have still unsettled accounts with them.

Int. 33. Did you ever receive any money from the United States marshal, collected on said judgment?

Ans. No, sir.

Int. 34. Did Mess. Merrick & McKinnon, subsequent to the first of October last, pay you any money on any account whatever?

Ans. I have no record of any such payment, but they may have. They paid me money frequently, but I have no record of it.

100 Int. 35. What collections, had Mess. Merrick & McKinnon in their hands for you or your firm in Oct., 1863?

Ans. I can't answer that for the reason that Mess. Merrick & McKinnon, in connection with Mr. Vaughan, (J. B.,) had many collections of mine, and still have.

Int. 36. From whom did you receive money collected by Mess. Merrick, McKinnon, and Vaughan?

Ans. I recollect receiving it from each party.

Int. 37. Have you now the journal of Wm. M. Ross & Co. for the year 1860? and if yea, state whether or not there is any entry under date of Oct. 18, 1860, showing money drawn by you at said date from the Marine Bank; if yea, give such entries.

Ans. I have the journal now before me. I find an entry of one item amounting to $3,273 14; one of $130 70; one of $1 31; one of $6 90, and one of $7 85; in all $3,419 90.

Int. 38. Who drew the check of $3,273 14, and on what account was same drawn?

Ans. I and my brother were drawing checks indiscriminately, from one to fifty a day, probably in the course of our regular business. I cannot state who signed that check or the purpose for which it was used.

101 Cross-examined by Mr. McKinnon:

Cross 1. State whether you had a conversation with Henry A. Kohn at any time subsequent to the payment of the Unna judgment at your store; and if so, whether in that conversation you told him you had got the judgment for its face without interest; and did he tell you that he understood there was money made on that judgment?

Ans. I had several conversations with him; these conversations grew out of the fact that he had promised to pay his share of appealing the case, which he refused to do afterwards, if we would use our influence with Mr. Clark to prevent the whole judgment from being levied on him. I never stated to him anything from which he could properly infer I had any interest in the judgment, but always told him the judgment was bona fide the property of Clark and his partner, and had no interest of any kind or nature in it. I used my influence with Mr. Clark to prevent him from levying the whole judgment on Kohn, being desirous that it should be paid fairly and honestly, share and share alike.

W. M. ROSS.

102 Subscribed May 30, 1864.

W. H. BISHOP, Jr., *Master*, &c.

103 *Testimony of Henry A. Kohn.*

Examination of Henry A. Kohn, Oct. 5, 1864:

Int. 1. What is your name?

Ans. My name is Henry A. Kohn.

Int. 2. Were you one of the defendants in a judgment recovered in the circuit court of the United States for the northern district of Illinois, in which Levi J. Unna was plaintiff and Henry A. Kohn *et al.*, defendants, for $6,307 89 and costs?

Ans. I was.

Did you pay any portion of the same, and if so, how much, where, and to whom?

Ans. I did. I paid 17th Oct., '63, $1,447 38, and on 14th Dec., '63, $689 59. The first payment I made to the marshal, and the second I am not sure whether I paid to Mr. McKinnon or to the marshal.

Int. 3. Did you make such payments pursuant to any agreement? and if yea, with whom was said agreement made and what was it?

Ans. Mr. Paine, of Shearer, Paine & Strong, came into my store, and wanted to know if I was one of the defendants, and he told me he had got a judgment and wanted to know what I would do about it. I told him then I was willing to pay my share at any time.
104 He told me he would take it if all the rest would do the same. I went to Mr. Van Buren, my counsel, and told him to arrange it for me. I then went up with Mr. Van Buren to Merrick & McKinnon's office, and I wanted to settle my part, and they would not receive it first without the whole judgment could be settled. Mr. Paine was present, and myself and Mr. Van Buren, and McKinnon & Merrick. The marshal then came to my store, and demanded the whole judgment. Wm. M. Ross told me previous to that, that he would pay his share if all the rest would pay down, Kohn & Bro. one-quarter, Wm. M. Ross & Co. one-quarter, Shearer, Paine & Strong one-quarter, and Selz & Cohen one-quarter. I stated to the marshal when he came in that this was our agreement. The marshal then took from me what I supposed was one quarter, (the first payment.) It being found that there was a mistake, the second payment was made to make good my quarter. I made the arrangement through Mr. Van Buren for bidding in the property at the sale, and I paid the amount of the bid ($2,175) to Mr. McKinnon.

Int. 4. State whether or not you had any conversation with
105 Mr. Wm. M. Ross in respect to said judgment after you made payment as aforesaid; and if yea, state what was said, and when, and where it was.

Ans. I had a conversation. I think it was in his store after the payment. I can't tell exactly when, or who was present. I told him I understood there was money made on that judgment. He told me we got it for the face of the judgment, without interest; I think he said we, not he.

Who was he speaking of when he said we?

He simply said, "We had got it." What lead to this conversation, if anything, I have now forgotten.

H. A. KOHN.

Subscribed Oct. 5, 1864, before me.

H. W. BISHOP, Jr,
Master, &c.

106 *Testimony of Wm. W. Strong.*

Examination of William W. Strong, Oct. 5, A. D. 1864:

Int. 1. What is your name and your residence?

Ans. My name is William W. Strong; I reside in the city of Chicago.

Int. 2. Were you in business in Chicago in 1860, and had you partners? if yea, what were their names. and the style of the firm?

Ans. I was in business in Chicago in 1860. I had partners—Leonard B. Shearer and John S. Paine—under the firm of Shearer, Paine & Strong. We dissolved about September first, 1860. Philo Carpenter succeeded to their business, and I conducted the business for him.

Int. 3. Do you remember of the recovery of a judgment in the circuit court of the United States for the northern district of Illinois, about the 5th of March, 1859, for $6,307 59, against yourself, said Leonard B. Shearer, and others, in favor of Levi J. Unna?

Ans. I remember the fact of the recovery of a judgment, but don't remember the amount.

107 Further examination postponed by consent, until Monday, Oct. 10, 1864, at 10 a. m.

H. W. BISHOP, Jr.,
Master, &c.

Oct. 10, 1864.

Int. 4. At what time did the firm of Shearer, Paine & Strong dissolve?

Ans. In Sept. 1, 1860.

Int. 5. What business were they engaged in?

Ans. In the furniture business.

Int. 5. State whether or not the said judgment was recovered on account of an alleged trespass, committed on behalf of the said firm of Shearer, Paine & Strong, or on an individual matter of the said Shearer and yourself.

Ans. It grew out of the firm matter.

Int. 6. Where did Leonard B. Shearer, John S. Paine, and Daniel L. Shearer reside in the year 1860, and where have they resided continuously since?

Ans. Leonard B. Shearer and John S. Paine have resided in and near Boston, and do still, and Leonard B. Shearer, up to his death in Aug., 1864, Daniel L. Shearer in 1860, and continuously since resided in New Orleans.

108 Int. 7. Was or not the said Daniel L. Shearer, in Oct., 1860, the copartner in business with said Leonard B. Shearer and John S. Paine, or either of them?

Ans. He was not, and has never been to my knowledge.

Int. 8. Were said Leonard B. Shearer, Daniel L. Shearer, and John S. Paine in anywise related? if yea, state how.

Ans. The two Shearers were brothers, and Paine married their sister.

Int. 9. What arrangement was made as to the payment of the debts of said Shearer, Paine & Strong on their dissolution?

Ans. There were not many debts to pay; Philo Carpenter paid some. There were not many to pay.

Int. 10. Was the said judgment of Unna against yourself and said Leonard treated and considered by the firm as a judgment, if paid at all, to be paid by the firm?

Ans. It was a judgment against the firm of Shearer, Paine & Strong, and it was understood between me and Mr. Shearer that it was to be settled by contribution, and that he was to pay my share and his, in consideration of a business understanding between him and me.

Int. 11. Was Daniel L. Shearer in Chicago in Oct., 1860?

109 Ans. I don't think he was. I think he left in Sept., but he might have been early in October, not later than the 1st or 2d of October.

Int. 12. How long was he here at that time?

Ans. He was here, perhaps, ten days to assist in advising in reference to the sale and appraisement of the stock to Mr. Carpenter. On reflection, I think that Daniel L. Shearer left here about the first week in September, as it was that the business was done that he came here to transact. I am sure that he was not here in Oct., 1860.

Int. 13. When was it that you arranged with said Leonard B. Shearer about his assuming the payment of said judgment?

Ans. It was always understood that he should assume my share of said judgment, in consideration of the arrangement I have before spoken of.

Int. 14. Was the said John S. Paine in the city of Chicago in October, 1860?

Ans. I can't state positively. He was here at the time of selling out, and, I think, in Oct., 1860.

Int. 15. How long was said Paine here during October?

110 Ans. I think two weeks; that is my impression.

Int. 16. State whether or not Daniel L. Shearer has been in Chicago since the fall of 1860.

Ans. He has not been here, and is still in New Orleans.

Int. 17. State what you know, if anything, about the purchase of the said judgment of said Unna against yourself and others, about the 18th of Oct., 1860.

Ans. In regard to the details I did not know that the judgment was purchased until about a year after it was purchased. At the time it occurred I did not know anything about it.

Int. 18. Did you learn that the judgment had been assigned to Daniel L. Shearer and Wm. Clark?

Ans. Not until September or October, 1863.

Int. 19. From whom did you then learn it, and how?

Ans. My impression is that I learned it from three or four perties. First, from Henry A. Kohn who were the parties were. I did not who the parties were.

Int. 20. From whom did you first learn that it was purchased?

Ans. I can't state.

111 Int. 21. Did you have anything to do with adjusting the
satisfaction of said judgment about Oct., 1863? and if yea, state all that you did, if you paid any money at that time; and if so, to whom, and what amount?

Ans. All I had to do with the judgment was to see that my proportion was paid over to the marshal by Mr. Leonard B. Shearer, for which I took a receipt from the marshal.

Int. 22. Where was it that you took the receipt from the marshal, and who was then present, and when was it?

Ans. I suppose it was the marshal's office. Mr. W. M. Ross was there, Henry A. Kohn, Judge Van Buren, and John S. Payne, and Mr. McKinnon. It was on the

Int. 23. At whose request were you there present?

Ans. At my own.

Int. 24. Did you pay any money, then, on the said judgment to the marshal or any other person? and if yea, was the payment made by check, or in currency, or otherwise? and if yea, how much was paid?

Ans. I can't say how it was paid except to the satisfaction
112 of the marshal who gave a receipt. It was arranged by Leonard B. Shearer.

Int. 25. Who was Paine acting for, then and there?

Ans. For Daniel L. Shearer, I believe.

Int. 26. Was Paine at that time in partnership with Leonard B. Shearer?

Ans. He was.

Int. 27. When had you last seen said Leonard previous to that time?

Ans. The last of August.

Int. 28. Did he then direct you to be present when said judgment should be satisfied, or when did he direct you, if at all?

Ans. There was no direction about it. He requested me to be on the look out.

Int. 29. You were not then present at the marshal's office on his behalf?

Ans. I was present on my own behalf and not at his request.

Int. 30. Who informed you at that time the matter would be arranged at that time at the marshal's office?

Ans. I think it was this Merrick & McKinnon—I think on the whole it was Kohn who told me, and wanted me to be on hand.

Int. 31. What did you state to Kohn?

Ans. I told him I was ready to pay my proportion.

Int. 32. How long was that before you went to the mar-
113 shal's office?

Ans. I think it was a week or ten days.

Did you on that time write Leonard B. Shearer and get his share of the money?

Ans. I did not.

Int. 33. What arrangement did said Leonard make with you about sending his share of the money to pay said judgment?

Ans. On further reflection I think I wrote Leonard B. Shearer that the matter was coming up for adjustment and would need funds to meet it. He did not respond to my letter at all.

Int. 34. How then did you arrange with the marshal about said Leonard's share?

Ans. No money passed then my hands for said Leonard B. Shearer, but the marshal gave me a receipt for Leonard's part and my own, a copy of which I will hereafter annex hereto if I can find it. I waited and saw that my proportion and Leonard B. Shearer's was indorsed on the execution by the marshal.

Int. 35. Did Paine pay any money to the marshal that you saw on behalf of Leonard B. Shearer?

Ans. I did not see Paine pay over any money to the marshal on behalf of L. B. Shearer. I don't know who arranged it for Leonard B. Shearer with the marshal.

114 Int. 36. How did said Paine arrange with Leonard B. Shearer about his proportion of said judgment as a partner of said firm?

Ans. I don't know how it was arranged.

What were Paine's relations with Leonard B. Shearer pecuniarily?

He was a junior partner in the furniture business in Boston, and at the time of his, Leonard's, death.

WM. W. STRONG.

Subscribed Oct. 5, 1864.

H. W. BISHOP, JR.,
Master, &c.

115 *Testimony of J. E. Gary.*

Examination of Joseph E. Gary, Oct. 15, 1864:

Int. 1. What is your name?

Ans. My name is Joseph E. Gary.

Int. 2. State whether or not you were one of the attorneys for plaintiff in a case where judgment was rendered in the circuit court of the United States for the northern district of Illinois for $6,307 89, in which case Levi J. Unna was plaintiff, and Henry A. Kohn *et al.* were defendants, being an action of trespass.

Ans. I was.

Int. 3. State whether or not the said judgment was afterwards assigned, and if yea, to whom; and state all of the facts and circumstances relating to the said assignment, and any conversations had with the parties acting in that behalf, and all that was done to your knowledge about the same, and by whom done.

Ans. It was assigned on the 18th of October, 1860, by the plaintiff, Unna, to Daniel L. Shearer and William Clark. About the 1st of September, 1860, I should think, at least several weeks before the
18th of October, a gentleman who was a stranger to me came
116 to me and wished to know upon what terms that judgment
could be bought. I told him that I had no instructions from Unna on the subject; that I did not believe Unna would make any proposition, but that if he, this stranger, had any proposition to make I would carry it to Unna and bring his answer. He then offered to give four thousand dollars for it. I told him that it was no use to carry such a proposition to Unna, for he would not consider it, but nevertheless I would carry it. I did so, and Unna refused to consider it. I reported Unna's refusal to this stranger, and we had two or three interviews within a day or two. In the course of those interviews I have the impression that this stranger told me his name was Paine, of the firm of Shearer, Paine & Strong, and that he wanted to buy the judgment for the brother of his partner, Shearer. The interviews which took place at that time resulted in nothing. A few days before the 18th of October, 1860, this Mr. Paine again came to see me about the purchase of this judgment. I can't recollect the particulars of the interviews between us, of which there were several, but they all consisted of a negotiation for the purchase of this judgment, and bantering about the price to be paid for it. Finally I reported to
117 Mr. Paine that Mr. Unna would take the face of the judgment,
including costs, cash down, and assign it to whoever Mr. Paine might desire, but that that proposition only remained open until the noon of the then next day, which, I now think, was the 18th of Oct., 1860. At noon of that day he came in and accepted the proposition, and requested that Unna and myself would meet him at the office of Mr. Beckwith that afternoon, to execute the assignment and receive the pay. That afternoon Mr. Unna, Mr. Seeley, Paine, Mr. Beckwith, myself, and a gentleman who was a stranger to me, but whose name I understood to be Clark, met at the office of Mr. Beckwith. Unna executed an assignment of the payment to Daniel L. Shearer and Wm. Clark, and received in pay for it ten certificates of deposit in the Chicago Marine and Fire Ins. Co., five of them payable to the order of John S. Paine, and five of them payable to the order of Wm. Clark. Those payable to Paine are numbers 9,202 to 9,206 inclusive, and those payable to Clark are numbered 9,211 to 9,215 inclusive, and amount in the aggregate to $6,546 28. Said certificates I now hold in my hand, and received them here in the master's office
from Eugene C. Long, late teller in the said Chicago Marine
118 and Fire Ins. Co. Certificates Nos. 9,202 and 9,211, for
$119 20 each, which were to cover the costs, are indorsed by Wm. H. Bradley, clerk of the U. S. circuit court for northern dist. of Illinois, whose handwriting is known to me and I recognize it. I am not sure whether those two certificates went into Unna's hands at Beckwith's office or were taken to the office of Mr. Bradley and given to him. Certificates of 9,203 and 9,212, of $145 each, I took from Beckwith's office and carried to Mr. E. Van Buren, as his fees as

counsel in the case. Certificates 9,213 and 9,214, of $300 each, I took myself in payment of attorney's fees from Unna to me; and certificates 9,204 and 9,205, of $300 each, were taken by Mr. Seeley, in payment of attorney's fees from Unna to him; and certificates 9,206 and 9,215, of $2,408 94 each, were taken by Mr. Unna for his own use.

JOSEPH E. GARY.

Subscribed Oct. 15, 1864, before me.

H. W. BISHOP, JR., *Master, &c.*

119 *Testimony of E. Van Buren.*

Examination of Evart Van Buren, September 27, A. D. 1864:

Int. 1. What is your name?

Ans. My name is Evart Van Buren.

(Mr. McKinnon objects to Judge Van Buren stating anything that was communicated to him as counsel.)

Int. 2d. State whether or not you acted as counsel for Henry A. Kohn and Joseph Kohn in the matter of satisfying, in part, a judgment recovered about the 5th of March, 1859, for six thousand three hundred and seven and 89-100 dols. and costs, in the circuit court of the United States for the northern district of Illinois, in an action of trespass in favor of Levi J. Unna and against said Henry A. Kohn and William M. Ross, Leonard B. Shearer, and others; and if yea, state what you did towards effecting the satisfaction, in part, of said judgment; who controlled and directed the collection thereof, and with whom you arranged the same on behalf of the said Kohn.

I did act as such counsel. I understood that the judgment had been assigned to some persons whose names, I think, were 120 Shearer and Clark. Henry A. Kohn came to me and expressed his apprehension that an effort might be made to collect the whole debt out of him, and wished me to assist him in protecting him so far that he should be obliged to pay only his own share. I called upon Mr. Coryden Beckwith, whom I understood represented the interests of the assignees, and stated to him Mr. Kohn's fears, and claimed that if Mr. Kohn should be obliged to pay the whole of it, he could claim contribution from the other defendants. I also stated that Mr. Kohn was willing to pay his share at any time. I understood Mr. Beckwith to concur in my views, and that he would advise the owner of the judgment to let Mr. Kohn pay his share, and arrange the matter in that way. I had several such interviews with Mr. Beckwith. I afterwards learned that the matter was in the hands of Messrs. Merrick & McKinnon. I then called upon Mr. Merrick, and stated to him substantially what I had stated to Mr. Beckwith; and my recollection is, that Mr. Merrick agreed to advise the owners of the judgment to take Mr. Kohn's portion, either at that time, or at a subsequent interview with Mr. McKin- 121 non. The question arose as to the other share for which Leopold and Selz were liable, and either at that or at some other interview I had with Mr. Merrick, he referred me to Mr. McKinnon as having more particular charge of the matter. I then saw Mr. McKinnon, and stated to him substantially what I had stated to Mr. Beckwith, and also what I had stated to Mr. Merrick. Mr. McKinnon seemed to question the right of either defendant, who should be compelled to buy more than his share to compel pay of contribution from his co-defendants. It was understood that the Rosses had, or would pay their share, and after a while it was conceded that Shearer, Paine & Strong would pay their share. The difficultyt hen arose as to the share of Leopold and Selz. I then proposed to Mr. McKinnon, as attorney for the owners of the judgment, that if they would direct the marshal to levy upon and sell certain real estate of Leopold, that Henry A. Kohn would at such sale bid upon such property sufficient to cover the share of Leopold and Selz; to which Mr. McKinnon assented. At the time of that interview a gentleman was present who was a stranger to me, but who I understood to be one of the owners of the judgment; the property was advertised and sold, 122 as I understood, at one time; and, I think, it was before the sale, at the marshal's office, Mr. McKinnon and Henry A. Kohn were present, when Mr. Kohn gave his check for what was considered his share of the judgment.

EVERT VAN BUREN.

Subscribed before me Sep. 27, 1864.

123 *Testimony of E. C. Long.*

Examination of Eugene C. Long, September 28, A. D. 1864.

Int. 1. What is your name and residence?

Ans. My name is Eugene C. Long.

Int. 2. State what your employment was, or has been, for the last four years.

Ans. Teller of the Marine Bank, and the Marine and Fire Insurance Company.

Int. 3. State whether or not on the 18th of October, 1860, Wm. M. Ross & Co. checked on the Marine Bank or the Marine Ins. Co. any money; and if yea, how much?

Ans. On the 18th of Oct., 1860, Wm. M. Ross & Co. drew out $3,273 14, nine and 52-100, and $132; three separate checks.

Int. 4. State whether or not William Clark had a note or notes discounted on said 18th Oct., 1860, at said bank or insurance co.

Ans. I have examined the books and do not find that he had any notes discounted at that time, nor do I find that his name was on the books at all as a party doing business with either of said institutions.

124 Cross-examined by Mr. McKinnon:

Cross 1. Were you discount teller in the Marine Bank, or Marine Fire Ins. Co., in Oct., 1860?

Ans. I was not.

Cross 2. Did all the discounts, made in the Marine Bank or Marine Fire Ins. Co., at that time appear on the books thereof?

Ans. Yes, sir; they did.

Cross 3. Who was cashier of the Marine Bank, or Marine & Fire Ins. Co. at that that time?

Ans. B. Dox was at that time.

Cross 4. State, if you know, whether any notes had been discounted, or money transactions had, by the officers of the Marine Bank or Fire Ins. Co., in Oct., 1860, or any part of said year, which would not appear on the books of said institution.

Ans. I don't know of any personally.

Cross. 5. Did Geo. Steel & Co. have an account with your bank in Oct., 1860?

I am not certain, I think he did.

EUGENE C. LONG.

125 Examination of Eugene C. Long resumed October 13, 1864, Mr. Roberts appearing for complainant, and Mr. Tewkesbury for Mr. McKinnon.

Int. 5. State whether not, on the 18th of October, 1860, the Chicago Marine & Fire Ins. Co. issued and delivered its certificates of deposit, to John S. Paine; and if yea, state the number thereof, the respective amounts and how the same were paid for.

Ans. On examination of our books, (my book,) diary, kept as teller of said Ins. Co., I issued on Oct. 18, 1860, certificates to the number, of six to John S. Paine, to the following amounts: one for one hundred and nineteen and 29-100 dollars; one for $145, and two for $300 each, and one for $2,408 94; one for $184 73. Total $3,457 87. For which I received payment thereof a certificate of deposit of the Blackstone Bank, Boston, for $3,440 67; for which I allowed him one-half per cent. premium, which is $17 20.

Int. 6. State whether or not on the 18th of Oct'r, 1860, the Chicago Marine & Fire Ins. Co. issued its certificates of deposit to Wm. Clark; and if yea, state the No. thereof, the respective amounts, and how the same were paid for.

126 Ans. On examining my diary of Oct. 18, 1860, kept as teller of said insurance co., I issued, on the 18th of Oct'r, 1860, certificates (five in) to William Clark, to the following amounts: one, $119 20; one for $145; two for $300 each, and one for $2,408 94, making a total of $3,273 14, for which I rec'd check of Wm. M. Ross & Co. on ourselves for $3,273 14.

Int. 7. State whether or not the said Ins. Co. and the Marine Bank were managed by the same or different officers, and how the accounts of depositors of the same were kept?

Ans. They were managed by the same officers, and the acounts were kept in the Chicago Marine & Fire Ins. Co., with three or four exceptions; and if checks were drawn on either indifferently, they were paid by the Chicago Marine & Fire Ins. Co.

Int. 8. Who kept said diary referred to you?

Ans. I kept it myself.

Int. 9. From examining the entries in said diary, state whether or not the said certificates were issued by you to the persons mentioned respectively, and on the accounts mentioned.

Ans. My book states that those certificates were issued to those persons, and on the account of those checks, and my books are
127 correct. I have examined the journal of the Ins. Co., and it agrees with my diary.

Int. 10. Please state whether Geo. Steel & Co. had an account with the said Ins. Co., or the Marine Bank; and if so, when said account commenced?

Ans. They did not; their account opened in Dec'r, 1860

EUGENE C. LONG.

Examination adjourned to Monday Oct. 17, 1864.

H. W. BISHOP, Jr.,
Master, &c.

128 Examination of Eugene C. Long resumed, Oct. 17, 1864.

Int. 11. Please look at six several certificates of deposit of moneys in the Chicago Marine & Fire Ins. Co., dated Oct. 18, 1860, purporting to be certificates of deposit in said bank by John S. Paine, and state whether or not they are the same already spoken of by you in your this examination.

Ans. I have examined the said certificates, and they are the same spoken of by me in this examination.

Look at the indorsements of the name of John S. Paine, on the said several certificates, and state whether or not you are acquainted with the handwriting of the said John S. Paine, and whether or not, from such acquaintance, you believe the said indorsements to be in the proper handwriting of the said Paine.

Ans. I know those to be his signatures. I have examined the signature book of the bank, and know that to be his handwriting.

Int. 12. Will you annex the said several certificates of deposit to this your deposition, and refer to, and identify the same?

129 Ans. These certificates are the only vouchers the bank holds, showing that the bank has paid the money to the said Paine; therefore the bank cannot give them up.

Int. 13. As you decline to part with the said original certificates of deposit, please attach to this your deposition true copies of the same, and refer and identify such copies.

Ans. I herewith attach to this my deposition true copies of the said certificates of deposit, which I identify as "Exhibits A, B, C, D, E, and F."

Int. 14. Examine the five certificates of deposit in said bank, of date Oct. 18, 1860, certifying to the deposit by Mr. Clark in said bank of moneys by him, and state whether they are the same heretofore referred to by you in your testimony.

Ans. I have examined said certificates, and find they are the same.

Int. 15. Examine the indorsements upon the said several certificates, and state whether you are acquainted with the handwriting of the said William Clark; and state whether, from such acquaintance, you believe the said indorsements to be in the proper handwriting of the said William Clark.

Ans. I have examined the said indorsements, and am acquainted with the handwriting of the said William Clark, and I believe the said indorsements to be his signature and writing. 130

Int. 16. Will you annex the said several certificates of deposit to this your deposition, and refer to and identify the same?

Ans. The certificates referred to are the only evidence the bank have of the payment by them of the same, and I cannot, therefore, attach them to this deposition, or part with them.

Int. 17. As you decline to part with the said original certificates of deposit, will you annex true copies of the same to this your deposition, and refer to and identify the same.

Ans. I herewith produce and annex to this, my deposition, true copies of the certificates last referred to, which I mark and identify as Exhibits G, H, I, J, K.

EUGENE C. LONG.

Subscribed before me, October 17, 1864:

H. W. BISHOP, Jr., *Master, &c.*

All of which is respectfully submitted.

H. W. BISHOP, Jr.,
Master in Ch'y, Circuit Court U. S., N. Dist. Illinois.

131 EXHIBITS *A*, *B*, *C*, *D*, *E*, AND *F*.

Exhibit A.

No. 9.202.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

John S. Paine, esq., has deposited in this office one hundred nineteen 20-100 dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A. Sec.*

$119 20-100.
Registered: E. C. LONG.

Indorsed: "John S. Paine, Wm. H. Bradley."

Exhibit B.

No. 9,203.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

John S. Paine, esq., has deposited in this office one hundred forty-five dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A. Sec.*

$145

Registered: E. C. LONG.

Indorsed: "John S. Paine."

132 *Exhibit C.*

No. 9,204.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

John S. Paine, esq., has deposited in this office three hundred dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A Sec.*

$300

Registered: E. C. LONG.

Indorsed: "John S. Paine, M. F. Tuley."

Exhibit D.

No. 9,206.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18*th*, 1860.

John S. Paine, esq., has deposited in this office twenty-four hundred eight 94-100 dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A. Sec.*

$2,408 94-100

Registered: E. C. LONG.

Indorsed: "John S. Paine, Levi J. Unna.' [SEAL.]

133 *Exhibit E.*

No. 9,207.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

John S. Paine, esq., has deposited in this office one hundred eighty-four 73-100 dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A. Sec.*

$184 73-100

Registered: E. C. LONG.

Indorsed: "John S. Paine."

Exhibit F.

No. 9,205.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

John S. Paine, esq., has deposited in this office three hundred dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

H. G. LOOMIS, *A. V. P.*
SAM. S. ROGERS, *A. Sec.*

$300

Registered: E. C. LONG.

Indorsed: "John S. Paine, M. F. Tuley."

134 EXHIBITS *G, H, I, J, K.*

Exhibit G.

No. 9,212.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

Wm. Clark, esq., has deposited in this office one hundred and forty-five dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

J. YOUNG SCAMMON, *Pr.*
HUGH S. DICKEY, *V. Pr.*

$145

Registered: E. C. LONG.

Indorsed: "Wm. Clark."

Exhibit H.

No. 9,213.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18, 1860.

Wm. Clark, esq., has deposited in this office three hundred dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

J. YOUNG SCAMMON, *Pr.*
HUGH S. DICKEY, *V. P.*

$300

Registered: E. C. LONG.

Indorsed: "Wm. Clarke, Joseph E. Gary." [SEAL.]

135 *Exhibit I.*

No. 9,214.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18*th*, 1860.

Wm. Clark, esq., has deposited in this office three hundred dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

J. YOUNG SCAMMON, *Pr.*
HUGH S. DICKEY, *V. P.*

$300.

Registered: E. C. LONG. [SEAL.]

Indorsed: Wm. Clark, Joseph E. Gary.

Exhibit J.

No. 9,215.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, Oct. 18*th*, 1860.

Wm. Clark, esq., has deposited in this office twenty-four hundred and eight 94-100 dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

J. YOUNG SCAMMON, *Pr.*
HUGH S. DICKEY, *V. P.*

$2,408 94-100.

Registered: E. C. LONG.

Indorsed: Wm. Clark, Levi J. Unna. [SEAL.]

136 *Exhibit K.*

No. 9,211.—State of Illinois.

CHICAGO MARINE AND FIRE INSURANCE CO.,
Chicago, *Oct.* 18*th*, 1860.

Wm. Clarke, esq., has deposited in this office one hundred nineteen 20-100 dollars, Ill. and Wis., payable in like funds to his order on return of this certificate.

J. YOUNG SCAMMON, *Pr.*
HUGH S. DICKEY, *V. P.*

$119 20-100.

Registered: E. C. LONG.

Indorsed: Wm. Clark, Wm. H. Bradley.

Indorsed: Filed June 20, 1865. Wm. H. Bradley, cl'k.

137 *Quitclaim deed.*

On the hearing of said cause, the complainants read in evidence the following deed, to wit:

This indenture, made this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty-five, between John Werkmeister and Katharina Werkmeister, of the city of Chicago, county of Cook, and State of Illinois, of the first part, and Henry Leopold and Benediot Schlossman, of the city of Chicago aforesaid, of the second part, witnesseth that the said party of the first part, for and in consideration of two thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim unto the said party of the second part, their heirs and 138 assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following described lot, piece, or parcel of land, to wit:

Sub-lot number two (2) of lot number two, (2,) block number nineteen (19) of the canal trustees, subdivision, of fractional section fifteen, (15,) addition to Chicago, except 20x92 feet from the northeast quarter of said lot deeded to George Arnstein, and 20x92½ feet from the southeast part of said lot deeded to Solomon Liebenstein. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part hereunto set their hands and seals the day first above written.

[SEAL.] JOHN WERKMIESTER.
[SEAL.] ANNA CATHARINE WERKMIESTER.

139 Signed, sealed, and delivered in presence of—
[SEAL.] ——— ———.

STATE OF ILLINOIS, *Cook County, City of Chicago, ss:*

I, Henry Greenebaum, a notary public in and for said in said county, in the State aforesaid, do hereby certify that John Werkmiester and Katharina Werkmiester, Henry Leopold, and Benedict Schofman, personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and volunary act, for the uses and purposes therein set forth.

And the said Anna Catharina, wife of the said John Werkmeister, having been by me examined separate and apart, and out of hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned
140 without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this twenty-eighth day of September, A. D. 1855.

[SEAL.] HENRY GREENEBAUM,
Notary Public.

Indorsements.

John Werkmeister and wife to Henry Leopold and Benedict Schlosman, quitclaim deed, No. 63,271. State of Illinois, Cook county, *ss.* Filed per record, Oct. 10, '55. Recorded in book 97 of deeds, page 359. L. D. Hoard, cl'k.

141 The complainant also read in evidence the following writ of fieri facias, together with the return of the marshal thereon, and the certificate of sale, which are respectively as follows, to wit:

Writ of fi. fa.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that of the goods and chattels, lands and tenements of Henry A. Kohn, Joseph Kohn, William M. Ross, John H. Ross, Morris Selz, Abraham Cohen, Henry Leopold, John M. Huntington, Leonard B. Shearer, and William W. Strong, defendants, in

your district, you cause to be made six thousand five hundred and forty-six dollars and twenty-eight cents, which Levi J. Unna, plaintiff, lately in our circuit court of the United States for the northern district of Illinois, before the judges thereof, at Chicago, in the district aforesaid, recovered against said defendants for damages which said plaintiff had sustained in that behalf, as for his costs and
142 charges by him about his suit in this behalf expended, whereof said defendants are convicted, as appears to us of record. And have you that money at the clerk's office of our said court in ninety days from the date hereof, to render to the said plaintiff for his damages aforesaid, and this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this nineteenth day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the 88th year.

[SEAL.] **WM. H. BRADLEY**, *Clerk.*

Circuit court United States, northern district of Illinois.

LEVI J. UNNA
vs.
HENRY A. KOHN, JOS. KOHN, WM. M. ROSS, John H. Ross, Morris Selz, *et al.*
} Fi. fa. No. 3,859.

Damages	$6,307 89	
Costs	238 9	
		$6,646 28
Costs in Supreme Court		90 53
Defendants' fee bill		
Costs in filing mandate		3 25
Collect		6,540 06

Judgment rendered March 5th, A. D. 1859.

143 **WM. H. BRADLEY**, *Clerk.*

By virtue of the within writ I have, on this 22d day of October, A. D. 1863, levied upon the following described premises or real estate of the within-named Henry Leopold, to wit: Sub-lot two (2) of lot two (2) of block nineteen (19) of the canal trustees' subdivision of fractional section fifteen (15) addition to Chicago, except 20 feet by 92 feet from the northeast quarter of said lot, deeded to George Arnstein, and 20 feet by 92½ feet from the southeast part of said lot, deeded to Solomon Liebenstein; the said premises or real estate being situated in the city of Chicago, and county of Cook and State of Illinois, and the buildings thereon now known as number 499 and 501 State street, Chicago, the property of Henry Leopold; and after advertising the sale thereof according to law, I offered all of the interest of the said Henry Leopold in and to the said land or premises to

public sale, and Henry A. Kohn having bid therefor the sum of two thousand one hundred and seventy-five dollars, which being
144 highest and best bid therefor, the same was struck off and sold to said Henry A. Kohn for the said sum of two thousand and one hundred and seventy-five dollars; and I further certify and return that William M. Ross and John H. Ross have paid to me hereon the sum of $2,136 94; and also that Henry A. Kohn and Joseph Kohn have paid to me the sum of $2,136 94; and that Leonard B. Shearer and William W. Strong have also paid to me hereon the sum of $2,136 94; all of which several sums, together with the sum of $2,175 00 made on the sale aforesaid, I have paid to plaintiff's attorney herein, excepting marshal's fees hereon, which I have retained. I therefore return this execution satisfied in full.

J. R. JONES,
U. S. Marshal.
By GEO. L. WEBB,
Deputy.

Marshal's fees.

Levy	$0 50
Notices sale	75
Printing	20 00
Certif. sale	75
Stamps	10
Return	10
Com's	81 40
Recording sale	1 00
	104 60

145 *Advertisement.—Marshal's sale.*

United States circuit court.—Execution. No. 3,859.

By virtue of a writ of fieri facias to me directed from the United States circuit court for the northern district of Illinois, in favor of Levi J. Unna, and against Henry A. Kohn, Joseph Kohn, William M. Ross, John H. Ross, Morris Selz, Abraham Cohen, Henry Leopold, John M. Huntington, Leonard B. Shearer, and William W. Strong, I have levied upon the following property, to wit: All the interest of Henry Leopold in and to the following described premises or real estate, to wit: Sub-lot two (2) of lot two (2) of block nineteen (19) of canal trustees' subdivision of fractional section fifteen (15) addition to Chicago, (excepting twenty feet by ninety-two feet from the northeast quarter of said lots, deeded to George Arnstein, and twenty feet by ninety-two and one-half feet from the southeast part of said lot, deeded to Solomon Liebenstein,) the said premises or real estate situated in the city of Chicago, Cook county, and State of Illinois, which I shall expose to public sale on the seventeenth day

146 of December, A. D. 1863, at the north door of the court-house, at Chicago, in said county, to the highest and best bidder for ready money. Sale to commence at the hour of 10 o'clock a. m. of said day.

Dated this 23d day of November, A. D. 1863.

J. R. JONES,
U. S. Marshal, Northern District of Illinois.
By GEO. L. WEBB,
Deputy.

Rec'd of J. R. Jones $2,894 70 on within execution.
Oct. 22, '63.

MERRICK & McKINNON,
Att'ys for Pl't's.

Rec'd of J. R. Jones, marshal, $257 48 on within execution.
Oct. 22, '63.

MERRICK & McKINNON,
Att'ys, &c.

Rec'd of J. R. Jones, marshal, $257 48 on within execution.
Oct. 23, '63.

MERRICK & McKINNON,
Att'ys, &c.

Rec'd of J. R. Jones, marshal, $1,381 92 on within execution.

JNO. J. McKINNON,
Att'y, &c.

Rec'd of J. R. Jones, marshal, $1,553 81 on within ex'n, this 17th day of Dec'r, 1863.

JNO. J. McKINNON,
Att'y, &c.

Rec. of J. R. Jones $2,135 94 on within execution.
Dec. 17th, 1863.

MERRICK & McKINNON,
Att'ys for Pl't.

147 Indorsed: "Filed Jan. 13th, A. D. 1864.
"WM. H. BRADLEY, *Clerk.*"

148 *Marshal's certificate of sale.*

UNITED STATES OF AMERICA,
Northern District of Illinois, sct:

LEVI J. UNNA, plaintiff,
vs.
HEMAN A. KOHN, JOSEPH KOHN, WILLIAM M. ROSS, JOHN H. ROSS, MORRIS SELZ, ABRAHAM COHEN, HENRY LEOPOLD, JOHN M. HUNTINGTON, LEONARD B. SHEARER and WILLIAM W. STRONG.
} Execution No. 3,859.

Amount of judgment for debt		
Amount of judgment for damages	$6,307	89
Amount of judgment for costs	238	39
Amount of judgment for costs	93	78
Interest on judgment	1,821	97
Interest on judgment, costs on execution	104	60
Amount total	8,566	63

This will certify that by virtue of a writ of fieri facias in
149 the above-entitled cause, issued out of the United States circuit court, bearing date the 19th day of October, A. D. 1863, upon a judgment rendered at the December term, 1858. I have levied upon the following described real estate, to wit:

All the interest of Henry Leopold in and to the following described premises or real estate, to wit: sub-lot two (2) of lot two (2) of block nineteen (19) of canal trustees,' subdivision of fractional section fifteen, (15,) addition to Chicago, (excepting twenty feet by ninety-two feet from the northeast quarter of said lot deeded to George Arnstein, and twenty feet by ninety-two and one-half feet from the southeast part of said lot, deeded to Soloman Liebenstein,) the said premises or real estate situated in the city of Chicago, Cook county, and State of Illinois, as the property of Henry Leopold, one of said defendants, and that I proceeded to advertise the same for sale by posting up advertisements in three of the most public places in the county, and publishing the same in the Chicago Daily Post, a newspaper published at Chicago, in said county, twenty days previous to the day of sale, stating that I should proceed to sell the same at the
150 north door of the court-house at Chicago, in said county, on the 17th day of December, A. D. 1863, at the hour of 10 o'clock a. m. of said day, to the highest and best bidder for cash, to satisfy execution; and at the time and place mentioned I proceeded to sell said property for cash, and that Henry A. Kohn being the highest and best bidder, became the purchaser thereof at the following prices, to wit:

All the interest of the said Henry Leopold in and to the premises or real estate above described for the sum of twenty-one hundred and seventy-five dollars, ($2,175.) And that the said Henry A. Kohn will be entitled to a deed for the same after the expiration of fifteen months from the date hereof, unless it shall be redeemed according to law.

Given under my hand this 17th day of December, A. D. 1863.

——— ———
U. S. Marshal Northern District of Illinois.
By ——— ———
Deputy.

$2,175.

Complainants also read in evidence the following deposition of David Steinberg, to wit:

151 *Testimony of D. Steinberg.*

Deposition of David Steinberg, taken at St. Louis, in the State of Missouri, before Samuel S. Boyd, a notary public, on the 29th day of November, A. D. 1864, on behalf of the complainants:

Int. 1st. Are you acquainted with the parties to this suit or any of them and if yea, which of them, and how long have you known them respectively, and where?

Ans. 1st. I know Henry Leopold, Morris Selz, Levi J. Unna, John H. Ross, Wm. M. Ross, one of the Shearers, and William W. Strong. I have known them since 1857 in Chicago.

Int. 2d. Where did you reside in the years 1857, 1858, 1859, and what was your business, and had you a copartner in business? and if yea, who?

Ans. 2d. I resided in 1857, 1858, and part of 1859, up to March, in Chicago. I was in business in 1857—in furniture business? was not in business in 1858 and 1859. In 1857 I had a partner in business, and his name was Edward Isidore.

152 Int. 3d. Were you or not acquainted with the fact that said Levi J. Unna brought an action of trespass and recovered judgment thereon in the circuit court of the United States for the northern district Illinois, against said William M. Ross, John H. Ross, Leonard B. Shearer, Wm. W. Strong, Henry A. Kohn, Joseph Kohn, Henry Leopold, Morris Selz, and Abraham Cohen, and John H. Huntington, about the 5th of March, 1859, for $6,307 89 and costs of suit? and if yea, state if you were present at and previous to the trials of said cause in said court.

Ans. 3d. I do know that said Unna brought such an action and recovered a judgment against the parties named for about the sum named. I was present at the trials of said action in said court, and was there previous to said trials in said court.

Int. 4th. State whether or not after the first trial of said cause and previous to the second trial thereof, any agreement was made with the defts. Selz, and Cohen, and Leopold, by or on behalf of the plaintiff therein, the said Unna, with reference to said suit, and

153 their further defence thereto; and if yea, state what said agreement was, when and where it was made, and who acted for the parties respectively thereto.

Ans. 4th. After the first trial of said cause there was an agreement made by me, acting for said Unna, and at his request, with Selz, acting for Selz, Cohen, and Leopold, that they would not make any further defence of the suit. This agreement was made in the United States circuit court-room and before the second trial. In consideration of their agreement not to defend, Unna agreed through me that no part of the judgment recovered by him should be levied upon their property.

Int. 5th. If you answer that you acted for said Levi J. Unna in making the said agreement, state whether you had authority so to do, and whether said authority was in writing.

Ans. 5th. Mr. Unna told me that any arrangement I made with Selz and others would be satisfactory to him. I had no authority in writing.

154 Int. 6th. Were you not assisting in the conduct and management of the said suit on behalf of said Unna at the several trials thereof, by and with the consent and request of said Unna?

Ans. 6th. I helped Mr. Unna at his request; got testimony in the case, and was myself a witness.

Int. 7th. If you answer the 4th int. above that you made an agreement with said Selz, Cohen, and Leopold, or one of them, as indicated in said interrogatory; state what, if anything, was done by them pursuant to the said agreement, and whether their conduct and action in the premises was known to said Unna.

Ans. 7th. In pursuance of the agreement made as above stated, Messrs. Selz, Cohen, and Leopold withdrew from the defence, and they and their attorneys left the court-room and made no further defence to the suit. This was known to Unna and the agreement approved by him before he got a judgment against them, and it
155 was known to Unna that they had left the court and abandoned the defence in pursuance to the agreement aforesaid.

Int. 8th. If you made the agreement indicated in the 4th interrogatory, did you or not communicate the facts to the said Unna? and if yea, was it or not approved by him? State what he said on that subject and did in reference thereto.

Ans. 8th. I have already stated that the agreement was made known to Unna and approved by him before he took judgment against them.

Int. 9th. What, if anything, was done by said Selz and Cohen and Leopold in the defence of the said suit at and before the first trial and up to the second trial thereof.

Ans. 9th. Messrs. Selz, Cohen, and Leopold had defended the suit with all their might up to the time I made the aforesaid agreement with them. Mr. Unna considered it of importance that they
156 should abandon the defence of the suit.

DAVID STERNBERG.

Complainant also read in evidence the deposition of Joshua Loring, which is as follows, to wit:

157 *Testimony of Joshua Loring.*

Deposition of Joshua Loring, taken before George T. Angell, a notary public in the city of Boston, State of Massachusetts, on the 27th day of December, A. D. 1864, on behalf of the complainants:

I, Joshua Loring, of Chelsea, in the county of Suffolk and State of Massachusetts, being duly and legally sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, do on oath depose and say, that I am the cashier of the Blackstone National Bank, formerly the Blackstone Bank of Boston, and have been since its commencement, over thirteen years ago. On October 11th, 1860, our said Blackstone Bank issued a certificate of deposit for thirty-four hundred and forty dollars and sixty-seven cents, made payable to the order of D. L. Shearer, upon a deposit by him of that amount then made in our said bank. We did not make any certificate, to my knowledge, payable in favor of John S. Paine. I 158 believe that D. L. Shearer kept no regular account at our said bank at that time, but the firm of Shearer & Paine, composed of Leonard B. Shearer and John S. Paine, did keep an account at our bank at that time. I find, on examining the books of our bank, that on the same day we issued this certificate of deposit payable to the order of D. L. Shearer we charged to the account of Shearer & Paine a check of similar amount. No deposit to the credit of D. L. Shearer was entered in a separate account. It was entered to credit of "certificates returnable," which was the name of the account in which all certificates of deposit we issued were entered. Whether the said certificate of deposit was issued upon the said check of Shearer & Paine or not I cannot tell, except that they were of the same amount. I suppose that the certificate was issued upon Shearer & Paine's check. The certificate is now in existence. I have it. I annex hereto a copy marked (A,) with its indorsements. I don't know whether D. L. Shearer was in this State in 1860. I have no recollection of seeing him here at that time, or that he ever did business for himself at our bank.

JOSHUA LORING.

159 *Exhibit A.*

$3,440 67. BLACKSTONE BANK, BOSTON, MASS, *Oct.* 11, 1860.

D. L. Shearer has deposited in this bank thirty-four hundred and forty dollars and sixty-seven cents, payable to the order of himself on the return of this certificate properly indorsed.

No. 622. JOSHUA LORING, *Cashier.*

Indorsed on the back is:

Pay the within to John S. Paine or order.

D. L. SHEARER,
JOHN S. PAINE,

Pay Exchange Bank, Boston, or order.

SAM'L S. ROGERS, *Cashier*.

Rec'd payment.

GEORGE W. THAYER, *Pres't.*

Defendants read in evidence the deposition of Corydon Beckwith, which is as follows, to wit:

160 *Testimony of C. Beckwith.*

Deposition of Corydon Beckwith, taken before P. A. Hoyne, U. S. commissioner, at Chicago, on the 13th day of May, A. D. 1865, on behalf of the defendants.

1st int. What is your name, age, occupation, and residence?

Ans. My name is Corydon Beckwith; I am over forty-one years of age; I am an attorney, and I reside at Chicago, Illinois.

2d int. What do you know, if anything, in relation to an assignment of a judgment obtained in the circuit of the U. S. for the northern district Illinois, wherein Levi J. Unna was plaintiff and Henry A. Kohn et als. were defendants? State all you know in relation to it particularly, and whether such assignment was an absolute and bona fide one or not?

(Objected to.)

Ans. In the fall of 1860 William M. Ross applied to me,
161 said Ross being one of the defendants in the suit mentioned
in the interrogatory, for my opinion in regard to the case which was then pending in the Supreme Court of the U. S. He furnished me with a printed copy of the record obtained from the clerk's office at Washington, D. C. I knew nothing of the case before that time. I gave him my opinion and advised him what had better be done in order to protect his interests. At the request of Daniel L. Shearer and William Clark I negotiated with Messrs. Van Buren & Gary for the purchase by them of the judgment in favor of Unna against Kohn et als. The terms of the purchase were agreed upon by Judge Gary and myself. The assignment was drawn by Judge Gary. He procured it to be executed. The money was paid to him in my office by Messrs. Shearer & Clark, and a copy of the assignment was placed in the U. S. court on the 18th of October, 1860, by my direction. Shearer paid one-half of the money and Clark paid the other half. Shearer acted as the friend of the defendants Shearer and Strong, and Clark was the friend of William M. Ross and John
H. Ross. I had no knowledge from what source Daniel L.
162 Shearer obtained the money which he paid further than what
he stated at the time. He stated at the time that it was his own money.

The last part of the answer objected to.)

Clark borrowed the money, which he paid, of Wm. M. Ross & Co., and gave his notes therefor. I made the arrangement by which Clark borrowed the money and gave his notes. The purchase was a bona fide one, and although Clark made the purchase as the friend of Ross, there was no understanding or agreement that Clark was not to pay his notes when they became due. On the contrary, they were both expressly told by me in making the arrangement, that no such understanding was to exist between them.

Sometime after this Wm. M. Ross handed me the notes of Clark, and I kept them until about the month of March, 1864. I do not recollect that Ross gave me any particular instructions in regard to them. Soon after the notes were handed to me I told Mr. Clark that when the judgment was collected and he paid over the money to Ross, I would consider that as a payment of his notes. After
163 the judgment was affirmed by the Supreme Court of the U. S.,
an execution was issued thereon, and, as I understood, was returned satisfied by the marshal. Sometime after the execution was returned, Clark applied to me for his notes, and I gave them to him, stating to him at the time that I supposed the matter was all settled up, and that it would serve no use or purpose for me to retain them, but that if there was any reason why he should not have them he must return them to me. I had no conversation with William Ross or John Ross about giving up the notes. At the time Clark and Shearer made the purchase of the judgment, the conversation between Clark and Ross in regard to it took place in my presence; I did the principal part of the talking myself. Mr. Ross went out and brought Clark into the office, without letting him know particularly what was wanted of him until he got there. I then stated to Mr. Clark that I wanted he should buy the one-half of the judgment of Unna against Kohn et als., and take an assignment of the same to himself and Daniel L. Shearer. Clark replied he hadn't got
164 the money. I told him Mr. Ross would lend him the money
and take his notes therefor, but that there must be no understanding between himself and Ross that the notes were not to be paid, or that the transaction was not an absolute one on his part. I asked Ross if he would lend him the money and take his notes therefor. Ross said he would. This was all the conversation there was on the subject.

CORYDON BECKWITH.

Subscribed and sworn to before me, this 13th day of May, A. D. 1865.

PHILIP A. HOYNE,
U. S. Com.

165 United States circuit court, northern district of Illinois, in chancery.

MORRIS SELZ and HENRY J. LEOPOLD
vs.
LEVI J. UNNA and others.

Know all men by these presents, that Max A. Meyer and Issac Marks are held and firmly bound unto Levi J. Unna, and all the other defendants in the bill and supplemental bill in chancery, filed in the above-entitled cause, in which the said Morris Selz and Henry J. Leopold are complainants and said Levi J. Unna and others are defendants, in the United States circuit court for the northern district of Illinois, which court is held at Chicago, in said district, in the penal sum of two thousand dollars, to the payment of which 166 we bind ourselves and each of us.

Given under our hands and seals this second day of August, A. D. 1866.

The condition of this obligation is such, that whereas the said Morris Selz and Henry J. Leopold, complainants in the above-entitled suit, have prayed an appeal to the Supreme Court of the United States from the decree of the said circuit court rendered in the above-entitled cause; now if the said Morris Selz and Henry J. Leopold shall duly prosecute said appeal, and pay all costs and damages caused by the prosecution thereof to the said several defendants, or any of them, and abide the orders of the court in the premises, then this obligation shall be void, otherwise in force.

[SEAL.] MAX A. MEYER.
[SEAL.] ISAAC MARKS.

Indorsed: "Approved.
JOHN J. McKINNON.

"Approved.
"THOMAS DRUMMOND.

"Filed August 4, 1366.
"WM. H. BRADLEY, *Clerk.*"

167 And on this day, to wit, the 3d day of December, 1866, came the parties of said suit, by their respective attorneys, and filed the following stipulation, to wit:

To the circuit court of the United States for the northern district of Illinois, in chancery.

MORRIS SELZ *et al.*
vs.
LEVI J. UNNA *et al.*

It being suggested that the supplemental bill filed in this cause is mislaid and cannot at present be found, it is agreed, that for the purpose of making up the record thereof for the Supreme Court, that the office copy thereof of Gookins & Roberts may be used with the same force and effect as the original, and in making up the record the clerk need not insert the original bill in the place where, in said office copy, it is referred to to be inserted, but the record shall have the same force and effect as though it were inserted; and this stipulation may be filed in the cause.

GOOKINS & ROBERTS,
Sol's for Selz et al.
MONROE & McKINNON,
Sol's for Deft's Ross, Strong, and Kohns.

168 NORTHERN DISTICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for the said northern district of Illinois, do hereby certify the foregoing transcript from pages one (1) to one hundred and sixty-seven, (167,) inclusive, to be a true, perfect, and full copy from the record of said court of all the proceedings had therein in said case, of Morris Selz, *et al.*, against Levi J. Unna, *et al.*, as the original of the same now remains in my custody, and that the citation issued out at the instance of the plaintiff in the appeal in said case is hereto appended to this record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district, this fifth day of December, A. D. 1866.

[SEAL.] WILLIAM H. BRADLEY, *Cl'k.*

[5-cent revenue stamp.]

169 The United States of America, to Levi J. Unna William M. Ross, John H. Ross, Lemuel B. Shearer, William M. Strong, Daniel L. Shearer, William Clark, Henry A. Kohn, and Joseph Kohn:

You are hereby notified and cited to be and appear at the Supreme Court of the United States, at a term thereof to be begun and holden in the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1866, pursuant to an appeal prayed for and granted in the circuit court of the United States for the northern district of Illinois, on the 26th day of July, A. D. 1866, in the certain suit or matter in controversy before and then pending in said circuit court, on the chancery side thereof, wherein Morris Selz, and Henry Leopold were complainants, and Levi J. Unna, William M. Ross, John H. Ross, Lemuel B. Shearer, William M. Strong, Daniel L. Shearer, William Clark, Joseph Kohn, and Henry A. Kohn, were defendants, then and there in said Supreme Court to show cause, if any there be, why the judgment of said circuit court for the northern district aforesaid, against said Selz and Leopold, complainants as aforesaid, should not be corrected, and why speedy justice should not be done in the premises.

Witness the Hon. Thomas Drummond, judge of said circuit court for the northern district of Illinois, this third day of December, A. D. 1866.

THOMAS DRUMMOND.

170 We acknowledge service of a copy of the within citation on us, this 3d day of Dec., 1866.

MONROE & McKINNON,
Sols. for Deft. Kohn et al.

171 In the Supreme Court of the United States. December term, 1866.

MORRIS SELZ *et al.*
vs.
LEVI J. UNNA *et al.*
} In chancery.

It appearing that the supplemental bill filed in this cause has been mislaid, and the preparation of the record for the Supreme Court delayed by the clerk for the purpose of finding said supplemental bill, it is therefore agreed that the record may be filed in the Supreme Court, within the first thirty days of the term, with the same force and effect as if filed within the time prescribed by the rules of court, and this stipulation may be made a part of the record of the cause.

Chicago, Ill., Dec. 4th, 1866.

MONROE & McKINNON,
Sols. for Deft. Kohn et al.
GOOKINS & ROBERTS,
Sols. for Compt's.

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OF THE UNITED STA

[illegible] TERM, A. D.

MORRIS SELZ,
HENRY LEOPOLD,

vs.

LEVI J. UNNA *et al.*

TO THE CIRCUIT COURT OF THE UNITED
NORTHERN DISTRICT OF ILLINOIS.

AND POINTS OF PLAINTIFF

BY

[illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES.

MORRIS SELZ AND HENRY LEOPOLD
vs.
LEVI J. UNNA *et al.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND POINTS OF PLAINTIFFS IN ERROR.

It appears from the bill and proofs in this case, that on the 5th of March, 1859, one Levi J. Unna, a defendant herein, recovered a judgment in the Circuit Court of the United States for the Northern District of Illinois, in an action of *trespass*, for $6,307.89, besides costs, against the complainants, Selz & Leopold, and the defendants, William M. Ross, John H. Ross, Leonard B. Shearer, William W. Strong, Abraham Cohen, Henry Kohn, Joseph Kohn, and one John M. Huntington.

That these persons, against whom this judgment was so rendered, in said action of trespass, together with others upon whom the marshal failed to serve the summons, who were alleged to have been engaged in the trespass, and against whom *nolle prosequis* were entered, were so sued for levying and selling the property of said Unna under divers writs of *fieri facias* issued on judgments recovered by certain of them respectively, in the courts of Cook county, Illinois, against David Sternberg and Edward Isidor, who were copartners. The complainant, Henry Leopold, was a *mere surety* on the bond given by Selz & Cohen, to the sheriff of Cook county, to indemnify him for levying the *fieri facias* upon the judgment of said Selz & Cohen, against said Sternberg & Isidor, said Leopold having no interest in the *fi. fa.*, or the proceedings under it. William M. and John H. Ross also obtained judgment against said Sternberg & Isidor, and issued a *fi. fa.* thereon, which was so levied; also Henry A. and Joseph Kohn, obtained a judgment and levied in like manner, and Leonard B. Shearer, William W. Strong and John S. Paine, obtained a judgment and levied in like manner. The sheriff, before levying under these several writs, required the respective plaintiffs therein to execute to him bonds of indemnity, with sureties therein; and this action of trespass was brought against all these plaintiffs in execution and their sureties. Huntington, who was also defendant, acted as counsel for them, or some of them. The sheriff and his deputy were also made defendants. It does not appear that there was any other concert between them than in the fact that these several firms caused their several executions to be levied on the goods and chattels of Unna, to make the debt of Sternberg & Isidor, and sold them at one time, under these executions of *fi. fa.*; the amount realized, however, *did not satisfy* the several executions. It does not appear what the amounts of the respective *fieri facias* were, only that the one in favor of Selz & Cohen was for $362.08, and $6.00 costs, which was not satisfied by the levy and sale. As the recovery of Unna in the action of trespass was $6,307.89, besides costs, that would indicate that the other writs of *fieri facias* were large, it being the amount realized on these writs, as no smart money was actually recovered in the action of trespass, though this fact does not appear in the record. Yet it will not be contested, we presume.

It further appears, as aforesaid, that the complainant Selz, and his surety, the complainant Leopold, defended against the action of trespass aforesaid, and the jury having failed to agree upon a verdict at the first trial, and the second trial coming on, the plaintiff and defendants, Selz & Cohen, and their surety, Leopold, *bought their peace*, and made an agreement with the plaintiff Unna, that, upon consideration that they would not further defend the suit, but withdraw from all participation therein, any judgment which might be recovered therein should not be enforced against their property.

Pursuant to such agreement, said Selz & Cohen and Leopold abstained from further participation in the defense of the suit, and just previous to the second trial, they, with their counsel, retired from the court room, where the agreement was made, and the other defendants therein, electing to make defense, and try the cause before a jury, a verdict and judgment was rendered therein for the plaintiff, Unna, as aforesaid. Thereupon, certain of the defendants therein, to wit, William M. and John H. Ross, and Leonard B. Shearer, and Strong, sued out a writ of error from this court upon such judgment.

The bill of complaint further alleges, and we respectfully insist that the proofs show, that while said writ of error was pending in this court, the plaintiffs therein, said William M. and John H. Ross, and Leonard B. Shearer, and W. W. Strong, *paid and satisfied* the said judgment and costs, but for the fraudulent purpose of having said judgment affirmed and collected in part from their co-defendants therein, the said Selz, Cohen, Leopold, H. A. and Joseph Kohn. They caused it to be assigned on the record to one Daniel L. Shearer, the brother of said Leonard B. Shearer, and one William Clarke, the friend of said Rosses, and thereupon, by collusion with said Clarke and Daniel L. Shearer, they caused the writ of error to be dismissed for want of prosecution. That they, said Rosses, Leonard B. Shearer, and Strong, caused execution of *fi. fa.* to issue upon such judgment, and levied upon the interest of complainant Leopold, in the real estate described in the bill. That the said interest was about to be sold in satisfaction of said *fi. fa.* The bill prays that defendants be enjoined from proceeding to sell the interest of Leopold in the real estate aforesaid, and that they be enjoined from further proceedings to collect said judgment, and that it should be declared paid and satisfied *of record*, as it was in fact, and for general relief. Defendants, William M. Ross, Leonard B. Shearer, William Clarke, and William W. Strong, answered, substantially denying that the judgment was paid, and that the assignment to Daniel L. Shearer and William Clarke was fraudulent, but insisted that the judgment was unpaid, and the assignment was *bona fide.* No affidavits were filed in support of the bill, and the court, upon the filing of these answers denying the equity of the bill, refused the preliminary injunction, and thereupon the interest of the complainant herein, Leopold, in said real estate was sold to the defendant in the supplemental bill, said Henry A. Kohn, at the sale under said *fi. fa.*, December 17th, 1863. Thereupon the complainants filed a supplemental bill, making said Kohn a defendant, alleging that said Henry A. Kohn had bought said real estate at the sale thereof under said *fi. fa.*, and praying that he might be enjoined from taking a deed thereof, setting forth, among other things, that said Kohn, previous to said purchase by him, had knowledge of the said equities of the complainants, Selz & Leopold, and that he was colluding with said other defendants herein, to defraud the grantor of said Leopold of his said interest in said real estate.

Said Kohn answered, and denied the allegations, as to knowledge of the said Selz & Leopold's equities, as aforesaid, admitting the purchase of said Leopold's interest in said real estate.

The court granted the injunction against said Kohn, but upon the final hearing dissolved it and dismissed the bill and supplemental bill, and thereupon plaintiffs in error sued out this writ of error.

The complainants insist in this case, as the ground of the relief sought by the bill and supplemental bill, that it is inequitable, that the interest of the complainant Leopold, in the real estate in the bill set forth, should be subjected to the payment of the judgment rendered in the action of trespass in favor of Unna.

First, Because there was a valid agreement between complainants and Unna, that in consideration that the complainants would retire from the suit and make no further defense thereto (which they did), that the judgment should not be levied upon their property, which agreement is binding in law and equity upon the assignees of the judgment (Shearer and Clarke).

Secondly, Because the judgment was in fact *paid* by certain of the defendants, to wit, the Rosses, and Shearer, Paine and Strong, and the assignment thereof to Shearer and Clarke was a mere cover to enable the defendants, the Rosses, and Shearer, Paine and Strong, to enforce *contribution* from the complainants by keeping the judgment unsatisfied of record and apparently sold and assigned, and issuing execution thereon against the property of complainants, and the judgment should be declared satisfied.

Third, That contribution would not be enforced against complainants at law or in equity (as equity follows the law), and they were not therefore bound to offer to make it as a condition of the relief sought, and this is especially true of complainant Leopold, he being a mere surety.

It is insisted upon the part of the defendants: First, That the agreement between Unna, the plaintiff in the action of trespass, and complainants, is not binding upon the assignees of the judgment, Shearer and Clarke, they being *bona fide* assignees and purchasers thereof for value, without notice of the agreement, and as to them it is fraudulent, and therefore they should be allowed to enforce the collection of the judgment in part, against complainants.

Secondly, defendants insist that the several defendants in the action of trespass, among whom were the complainants, were embarked in a common cause in levying their several executions against the property of the plaintiff Unna, in good faith, supposing it was the property of the defendants in the executions, and in defending the action of trespass up to the time of the second trial, and that it was not acting in good faith towards their co-defendants therein to enter into a secret agreement with the plaintiff, by which they were to be let off *scot free*, and leave their co-defendants to bear the burden alone of any recovery that might be had in that action, and that the effect of refusing the prayer of the bill and supplemental bill, and the relief therein sought, will be that these complainants will be compelled to pay their contributive share of the judgment so recovered, and that it is only equitable for them to do so.

Complainants reply, that even though it might be conceded that the complainant Selz should contribute towards the payment of the judgment, as to Leopold there can be no such pretense, and even as to Selz a court of equity will not permit the process of the court to be perverted by defendants to enforce in that illegal manner, the collection of a sum greater than the contributive share of Selz, and will enjoin them from so proceeding, until by cross-bill or other appropriate remedy they bring all the parties before the court and adjust the mutual equities. But as the defendants, the Rosses, and Shearer & Strong, by their sworn answers deny that they have any interest in the judgment, and aver that Daniel L. Shearer and Clarke are the owners, they estop themselves from thus appealing to the court to dismiss complainant's bill and allow them unmolested to enforce contribution. The position is a *felo de se.*

We think this is a full and fair statement of the positions heretofore assumed in this cause, and as preliminary to the discussion of our first proposition, we refer to the deposition of Sternberg (R., pp. 61 and 62), in which he testifies that such an agreement was made by him, acting by and on behalf of the plaintiff Unna and at his request, with Selz acting for himself and his copartner, Cohen, and their surety, the complainant Leopold; that it was made after the first trial of the said action of trespass made in the court room, and before the second trial of the cause; that it was known to the plaintiff Unna, and the said Selz, Cohen and Leopold, and their attorneys, left the court room and abandoned the defense in pursuance to the agreement, which was also then known to the plaintiff Unna; that up to the time of the agreement, said Selz, Cohen and Leopold had defended the suit with all their might, and that Unna considered it of importance that they should abandon the defense of the suit.

The testimony of this witness is not countervailed by any on the part of the defendants herein, and their defense thereto is not that it is not true, but that such agreement, if made, *was fraudulent* as against the defendants herein.

The agreement, then, being proved, and that Selz, Cohen and Leopold performed their part of it, was it binding upon the plaintiff Unna, or would he be allowed to repudiate it as fraudulent and void, or one which it would be inequitable for complainants to enforce, and, therefore, notwithstanding it was so made, he ought not to be estopped from enforcing the collection of the judgment? We do not, at present, stop to consider the rights of the assignees, Shearer and Clarke, but will hereafter show that they stand in precisely the same position in a court of equity that their assignor, Unna, does.

We inquire, then, why this agreement was not valid and binding between the parties thereto, and why a court of equity should refuse to enforce it. Was it contrary to public policy or good morals? Did it contravene any statute or settled principle of law? Nothing of all this. Was the consideration not sufficient to support the promise? The law is clear, "that the waiver of any legal right, at the request of another party, is a sufficient consideration to support a promise."

Here, complainants forbore and waived further defense in the action of trespass, withdrew therefrom, and allowed the plaintiff to go on with his suit, offering no further obstruction to its progress, and leaving their co-defendants to make further contest or terms of peace as their interests and views might dictate. The co defendants do not elect to make terms of compromise with the plaintiff, as these complainants did, and the action progresses to judgment nominally against all defendants, really only against those who chose to contest the suit. Now, the plaintiff comes to enforce collection, and levies upon the interest of the complainant Leopold, in certain real estate; Leopold demurs and interposes the agreement, but Unna says, "You can't do that, it is void, for fraud." How? In what respect? "Why, it was in bad faith to your co-defendants; you ought to have continued to co-operate with them to the end. But you induced me to withdraw. I might have protected myself against a recovery, by fighting you to the end, and defeated you altogether. You considered it of importance that I should abandon the defense of the suit, and it would be a *fraud* upon me, after thus inducing me to withdraw, to repudiate your bargain and keep the consideration that I gave you, too; put me back where I was when you induced me to make the contract, and then you may be heard, perhaps, to repudiate it, but until then, you are estopped in any forum of conscience, from setting up such a plea."

We respectfully submit that the foregoing is a fair statement of the argument on both sides. Surely, Unna cannot, in a court of equity, say that this agreement is not binding upon him. He will not in such a forum be protected in holding on to the consideration of the agreement and refusing performance of his part.

We confess ourselves entirely at a loss to perceive upon what principle of law this agreement must be held invalid as against the plaintiff in the judgment, Unna; and up to this point, we confine ourselves in the argument strictly to that proposition. We now advance a step further in discussing our proposition, and insist that the agreement is not only valid against the plaintiff, Unna, but also against his assignees, Daniel L. Shearer, and William Clarke; that in a court of equity the assignees stand in substantially the same position as their assignor, so far as the rights and equities of the defendants in the judgment, or any of them, are concerned, and this is so whether they had notice of the agreement between Unna and the complainants or not, whether they paid full value for it or not, and if their assignor, Unna, could not in conscience enforce the payment of the judgment, or any part of it, against complainants, they, the assignees, cannot enforce it. The decisions upon this point are uniform, and we only refer to a few where the principle is clearly stated.

In the case of *McJilton* v. *Love*, 13 Ill. Rep. 486, on page 495, the court say, "A judgment cannot be so transferred as to vest the legal interest in the assignee. It is a mere chose in action, and the beneficial interest only passes by the assignment, * * but he takes the judgment *subject to all defenses* that existed against it in the hands of the party from whom he received it;" and the court cite upon that point, *Hines* v. *Barnitz*, 8 Watts, 39; *Chamberlin* v. *Day*, 3 Cowen, 353; *Jeffries* v. *Evans*, 6 B. Monroe, 119; *Magher* v. *Kellogg*, 24 Wend. 32.

In the case of *Olds* v. *Cummings*, 31 Ill. R. 188, which was a proceeding in chancery by the assignee of a chose in action, (a mortgage), the court, after saying that at common law choses in action were not assignable, and that by the statute of Anne certain choses in action, such as bills of exchange and promissory notes, were made assignable, so as to vest in the assignee the legal title, observe further, as to this class of choses in action: "The assignee of *a judgment* even may, in his own name, enforce it in equity, but while courts of equity thus enforce equitable rights, they do it with a scrupulous regard to the equitable rights of others. Thus, if the *assignee of a judgment* attempt to enforce it in equity, no matter how much he paid for it, or how ignorant he might have been that it had been paid, or that there was other reason why it should not be collected, the court of equity will look into all the circumstances, and *will not enforce it in his favor if it ought not to be enforced in the hands of the assignor.*" This case is a very instructive one upon this subject.

We also cite to same point —

Leading Cases in Equity, vol. 2, part 2, p. 236, and cases there cited.
Rawson v. *McJunkins*, 27 Geo. 432.
Wright & Co. v. *Levy*, 12 Cal. 257.
Scott et al. v. *Shreave et al.*, 12 Whea. 605.
Bush v. *Lathrop*, 22 N. Y. 535.
36 Miss. 143.
Webster v. *Wise et al.*, 1 Paige, 319.
1 Vesey, 247.

Therefore, this agreement being upon a sufficient consideration, and valid, was as binding upon the assignees of the judgment as upon the assignor, and if it was inequitable for the latter to enforce it, then the former would not have any standing in a court of equity to do so.

We are now considering the case as between the assignees of the judgment and these complainants, aside from any equities which may be supposed to subsist as between complainants and the other defendants in the trespass suit, as that will be a subject for separate consideration, for, as is contended by defendants in error, it is the assignees who own the judgment, and are seeking to enforce its collection out of the property of complainant Leopold. Therefore, if these assignees, Shearer and Clarke, stand in the shoes of their assignor, Unna, the question is not whether the agreement between Unna and complainants was fraudulent as against the other defendants, but was it valid as between themselves.

If Unna could not be heard to set up that defense to this bill, then his assignees, Shearer and Clarke, stand in no better position, and are also estopped with him; for this question is to be viewed *precisely* as if it were a bill filed against Unna to enjoin him from collecting the judgment against complainants; and were such the frame of the bill, and the scope of the relief sought, can it be contended, with any degree of plausibility, that the agreement, although valid as between themselves, was a fraud upon the other co-defendants, and therefore ought not to be enforced in a court of equity? We think not.

Upon our second proposition, which answers defendant's first, we respectfully insist that the proof conclusively shows that this judgment was, on the 16th of October, 1860, *paid and satisfied*, by the defendants, the Rosses, and Shearer, Paine, and Strong, and that they resorted to the illegal scheme of causing it to be assigned by Unna to Daniel L. Shearer, (the brother of the defendant, Leonard B. Shearer, and brother-in-law of John S. Paine,) and William Clarke, the friend and supple instrument of the Rosses, and that this assignment was so made for the fraudulent purpose of collecting the *whole* of it from their co-defendants, or *such part* as they might elect. We say "fraudulent purpose," because we do not conceive but that they were advised by their counsel that if they paid this judgment, they could not resort to a court of law or equity, by direct proceeding, and recover back a ratable share by way of contribution from their co-defendants. It was because they well knew that they could have no claim for contribution, either in law or equity, that they resorted to this scheme. Otherwise they would have caused the judgment to be entered satisfied of record, and pursued their remedy in the courts; and their subsequent conduct in demanding the *whole amount* of the defendant Kohn, (see his dep., R., p. 41, Int. 3,) goes to prove that the original plan was not to enforce *contribution*, but *payment of the whole judgment* from their co-defendants, and this is what Ross meant when he told Clarke, previous to the assignment, that *there was money in it.* (Clarke's dep., R., p. 27.)

But we proceed to examine the testimony, showing that this judgment was, on the 18th of October, 1860, in *fact paid*, though nominally sold and assigned to Shearer and Clarke; and we premise, by saying that the defendants, Ross, Clarke and Strong, although nominally the witnesses of the complainants, were really *hostile* to them, and were examined under a *special order* of the court, (R., p. 13,) subject to objections, if any, by defendants, (who made none,) a practice which has obtained in this circuit in creditors' bills and like cases.

But to the testimony.

Judge Gary (p. 46) testifies, that several weeks previous to October 18th, 1860, and about September 1st, a stranger (who afterwards turned out to be John S. Paine, of the said firm of Shearer, Paine & Strong,) came to him and offered $4,000 for the judgment, saying that he wanted to buy it for Daniel L. Shearer; he was informed that the offer would be communicated to Unna, but that it would not probably be accepted. It being declined, some time elapsed; and a few days before October 18th, 1860, Paine again made overtures to Judge Gary for the purchase, and was informed that if he would pay the face of the judgment and all costs, without interest, he could have it, and that the offer must be accepted by 12 o'clock noon, of the 18th October. That just about the latter hour, said Paine came in and accepted the offer, and said the money would be paid over at the office of Mr. Beckwith, and the papers signed that afternoon, which was accordingly done. There is no testimony showing that any other person than Paine arranged for the purchase of the judgment, or had any conversation on the subject with Unna or his attorneys. In fact, it will appear that Paine managed the matter on behalf of these defendants up to its conclusion by the purchase of the real estate and payment by Kohn. And Paine, in this, acted for his firm of Shearer, Paine & Strong, and also for the Rosses.

Strong swears, (R., p. 43, Int. 10) that the judgment, though recovered against himself and Leonard B. Shearer, was treated and understood by the firm to be a debt of the firm, therefore Paine was as much interested in arranging it as the other members of the firm; and at the time of the negotiations with Judge Gary, the firm of Shearer, Paine & Strong had dissolved, and Leonard B. Shearer was residing in Boston, and by an arrangement between him and Strong, Leonard B. had assumed, as between them, to pay Strong's share of this judgment (R., p. 43, Int. 10).

Strong swears, (R., p. 43, Int. 11 and 12) that during October, 1860, and after the first week in September, *Daniel L.* Shearer was not in Chicago, but, then and ever since, resided in New Orleans, and was only in Chicago early in September, to arrange on behalf of Leonard B. Shearer, for the dissolution. That Daniel L. and Leonard B. Shearer were *brothers*, and that Paine married their sister (R., p. 43, Int. 8). That Paine was a junior member of the firm of S. & P., in Boston (R., p. 45, Int. 36). We, therefore, at the very threshold of the investigation, find one of the *real* though not nominal defendants in the judgment, Paine, negotiating with the plaintiff's attorney, Gary, for the pretended purchase. When we got, that afternoon, to Beckwith's office, who, as he swears, (R., p. 64) was the attorney of Ross, we find that the judgment is to be assigned to Daniel L. Shearer, Paine's brother-in-law, and one William Clarke, the friend and instrument of William M. Ross.

Turning now to the deposition of Beckwith, who is the attorney of Unna, in this cause for Ross, filing his answer, and was sworn by defendants, we find that this scheme was devised by him. He says, (R., p. 64) in the fall of 1860, after this cause had got into the Superior Court, Ross came and retained him, and after examining the printed record, he advised Ross what to do in order to *protect his interests.* The plan then devised by Mr. Beckwith, is, on Oct. 18, 1860, being finally consummated,—Beckwith on behalf of Ross, and Paine for his firm. The real parties in interest were present, it is true. Clarke was there, but that was to save appearances; his co-assignee, Daniel L. Shearer, was not there, as Mr. Beckwith deposes, by mistake, of course, for Strong swears (R., p. 43, Int. 12), that he was not here in October, and Gary specifies who was then present (R., p. 46). The name of Seely is mentioned in the printed record of Judge Gary's deposition, as a person present, but it is a misprint, it was Tuley, a former partner of Gary. Judge Beckwith took Paine for Daniel L. Shearer; in fact, Beckwith had forgotten how the negotiations for the purchase were brought about; he thinks *he* negotiated with Van Buren and Gary for the purchase of the judgment, and that the *terms* of purchase were agreed upon by Judge Gary and *himself;* but this, according to Judge Gary, is a mistake, and Judge Beckwith confounds what transpired at his office when the assignment was drafted and the consideration paid, with the *negotiations* which had been previously made by Gary and Paine, and the details of the negotiations between Paine and Gary are so minutely detailed by Judge Gary, that it is not probable that he can be mistaken in this particular; and it clearly appears from the testimony of Beckwith, that he was present at the assignment and payment of the consideration, acting as the attorney for Ross. Indeed, the principal facts touching the transaction had passed from Beckwith's memory, for he seems to remember, that at the time of the assignment at his office, Ross went out and brought Clarke in without telling him particularly what was wanted, and that *he*, Mr. B., then first broached the subject to Clarke; but it appears from Clarke's testimony, that this was also a mistake, that he had previously talked the matter over with the Rosses, and Paine, and that Ross had told him he, Clarke, could loan the money to buy the judgment, at the Marine Bank, in Chicago.

The testimony, therefore, sustains us in our first point, to wit, that the bargain for the purchase was made by Paine, one of the parties in interest defendants, and not by the assignees, Shearer and Clarke.

Our next point is, that the money to purchase the judgment, was the Rosses', and Shearer, Paine & Strong's, and not that of either Clarke or Shearer, the assignees.

To prove this, we cite the deposition of Eugene C. Long, remarking first, that the amount paid for the judgment to Unna, was $6,546.28, as appears by the assignment (R., p. 11) and the testimony of Judge Gary.

Long swears, (R., p. 48) that he was teller of the Marine Bank and Marine and Fire Insurance Company in October, 1860; that on the 18th of October, 1860, William M. Ross & Co. checked out of the Marine and Fire Insurance Company several sums, among others, $3,273.14. (This is precisely one-half of the amount paid for this judgment.) That on that day, he, as such teller, issued five certificates of deposit to Wm. Clarke, as follows, viz.: one for $119.20; one for $145; two for $300 each; and one for $2,408.94; total, $3,273.14; for which he received in payment *the check of Wm. M. Ross & Co.*, for that amount. On the same day the same bank issued to John S. Paine, a like number of certificates of deposit, together with another for $184.73 (the latter having no connection with this business), which he paid for in a certificate of deposit of the Blackstone Bank, of Boston, for $3,440.67 (R., p. 49).

Turning to the deposition of Joshua Loring, cashier of said bank (R., p. 63), we find that the said certificate of deposit was paid for in a check of *Shearer & Paine*, a firm composed of Leonard B. Shearer and John S. Paine; that Daniel L. Shearer had no account there, and although Paine went through the form of making the certificate of deposit payable to Daniel L. Shearer, yet it was indorsed in *his name* at the Chicago bank by Paine. That certificate was dated October 11, 1860.

Now, turning to the deposition of Judge Gary, (R., p. 46,) we find that these identical certificates of deposit, ten in number, were paid at Beckwith's office for this Unna judgment.

The proof is therefore conclusive that Leonard B. Shearer and John S. Paine paid one-half, and William M. Ross & Co. the other half, of the consideration paid for this judgment; and defendants do not even make any effort to prove by Paine, or any one, that Daniel L. Shearer actually paid this money. It is true, Beckwith says that Daniel L. Shearer told him, on the 18th of October at his office, that it was his money, but it turns out that Daniel L. Shearer was not then in Chicago, and that the person then there was Paine, and no doubt Paine did tell Beckwith it was *his* money, as it was in fact. So far then as th interest of Daniel L. Shearer is concerned, no effort is made by defendants to countervail the testimony of Loring and Long and Gary as to the certificates of deposit. In fact, nothing could be said in answer, except that Shearer and Paine were indebted to Daniel L. Shearer in the amount of the check which they drew from the Blackstone Bank, and which procured said certificate of deposit. Nothing could have been easier than to prove the fact, if it were true, that this money was really and *bona fide* the property of Daniel L. Shearer. But having failed to make any such proof, or even to attempt it, the conclusion is irresistible, that as the check of Leonard B. Shearer and John S. Paine procured the certificate, it was procured on their own behalf; Shearer and Paine actually paid one-half of the judgment—Shearer paying his own share as well as that of his former partner, Strong—according to his agreement with Strong in that behalf. (R., p. 43, int. 10.) An effort, however, was made on the part of Clarke to prove that *he* was the *bona fide* purchaser of one-half of said judgment, and that he bought it and paid for it with his own money; and Clarke actually swears (R., p. 29) that he raised the money on the 18th of October, 1860, to pay his share by getting his two notes of that date, one at six months, the other at nine months, for the amount, discounted at the Marine Bank of Chicago; and he further swears that he got the currency for those notes, and paid it over to Unna at Beckwith's office. But in this he is expressly contradicted by the *Teller*, Long, (R., p. 48,) who swears that he has examined the books of the bank and of the insurance company, and does not find that Clarke had any note discounted at that time, or that his name was on the books at all, as a party doing business with either of said institutions. In fact, Clarke had so little to do with this transaction, and was so entirely the mere tool of Ross, that he had forgotten that he had gone through the sham of executing his notes and delivering them to Ross, instead of to the bank, according to the direction given in that behalf by Beckwith, and the fact remains uncontested that it was the money of William M. Ross & Co. which procured the certificates of deposit for Clarke that paid his half of the consideration for the judgment. Aside from the foregoing facts, which are directly to the point, the surrounding and subsequent facts and circumstances go to show that this was not a *bona fide* purchase of the judgment by Shearer and Clarke, but that the assignment to them was a mere cover. It was not an investment that a prudent business man would have made on his own behalf, aside from the uncertainty of collecting such a chose in action. A writ of error had been prosecuted from this court to reverse it, and the costs, including counsel fees of the litigation in this court, would necessarily be large. The delay, owing to the amount of business on the docket, would be considerable, and the judgment was only drawing interest at six per cent., when money was worth a great deal more, and they were paying a large price for it, to wit, the principal and the costs, nearly the full amount then due. Clarke, according to the testimony of Beckwith, had no money with which to buy his half, and would have to borrow it in order to do so, and pay interest at the rate of ten per cent. at least, and the investment was not so inviting as to induce him to borrow money at that rate of interest to buy a judgment drawing but six per cent., involving in its collection large attorney's fees, and promising considerable delay, and perhaps ultimate uncertainty in its collection. These considerations render it highly improbable that the purchase by Shearer and Clarke was a *bona fide* one, but the testimony of their attorney, Mr. Beckwith, taken in connection with the other facts proved, show it to have been the merest sham. It further appears that they allowed the cause to sleep in this court for some three years, when the writ was then dismissed *for want of prosecution.* This of course was consistent with and a part of the plan or programme devised by the attorney of these parties "*in order to protect their interests;*" then a writ of *fieri facias*, on the 19th of October, 1863, is issued upon the said judgment, and put into the hands of the marshal, and as we would naturally expect, J. S. Paine. who was the only party who acted in the negotiations for the purchase of the judgment, again very properly appears upon the ground to conduct the steps in enforcing its collection, and we find from the deposition of the defendant, Henry A. Kohn, (R., p. 41,) that Paine came to his store, and informed Kohn that he had got a judgment, and wanted to know what he would do about it; that Kohn signified his willingness to pay his share; that Kohn then went with his counsel to the office of Merrick & McKinnon, Paine's attorneys, and wanted to settle his part, which they refused to receive unless the whole judgment could be settled; that *Paine was then present.* Nothing was done, and the marshal then came to his store and demanded the *whole judgment* of him, Kohn. Judge Van Buren, the counsel of Kohn, also testifies to this interview at the office of Merrick & McKinnon, (R., pp. 47, 48,) and he says a gentleman was present who was a stranger to him, but who *he understood was one of the owners of the judgment.* Kohn identifies this stranger as Paine. It was, however, arranged, Paine relenting, that if Kohn would pay one-fourth of the judgment, interest and costs accrued up to that time, and buy at the sale the interest of Leopold in this real estate, and pay for it $2,175, they would let him off; he, feeling happy that he was not compelled to pay the whole judgment, as they were then seeking to make him do, as appears from the testimony of Judge Van Buren and himself, agreed to pay one-half in this way. Kohn also swears to another fact, which shows clearly that Shearer and Clarke, the assignees, were men of straw in this transaction, to wit, that he told Ross that he understood that there was money made on that judgment, and that Ross replied, "WE got it for the face of the judgment, without interest." Who the "*we*" to whom he referred were, sufficiently appears by the other testimony in this case. That Ross so stated is no doubt true, for the remark was made in order to satisfy Kohn that they were not speculating off of him. It also appears from the testimony of Clarke, (R., p. 34, Int. 134,) that six hundred and forty-one dollars and ninety-six cents, was all the money that was paid to him, collected on the judgment, and that on the same day that he received it he paid it over to William M. Ross, (R., p. 31,) and every dollar of the money so paid by Kohn, to wit, $4,311.94, was divided equally between Ross and Paine, the latter being present also at the marshal's office when final settlement was made. (See deposition of Strong, R., pp. 44-5).

At this meeting at the marshal's office, Strong says he was present on his own behalf; that the marshal gave him a receipt for Leonard B. Shearer's part, and his own, which was indorsed on the execution; that he saw no money paid; that he paid none himself, and did not see Paine pay over any on behalf of Leonard B. Shearer. (Strong was not privy to the *scheme.*) In fact, the proof shows conclusively that nobody paid money except Kohn, and that McKinnon and Paine divided the money, McKinnon paying over to Ross his half of it, and Paine retaining Leonard B. Shearer's half. Clarke swears that he never got a dollar, except the $641.96, which he paid to Ross on the same day, and nobody swears that Daniel L. Shearer ever got a dollar, and neither of them in fact ever did, or the defendants would have proved it, as it was always in their power to do, if the facts were so. The evasive and contradictory character of the testimony of Clarke and Ross, render them utterly unworthy of belief, where they are unsupported by other witnesses, though their testimony does not shake the facts which are sworn to by the other witnesses, in any material part. It is true that Clarke swears that he bought one-half of the judgment, and that Ross swears so; but all the facts go to prove that it was a mere cover, and that the real purchasers were the defendants, William M. Ross & Co., and Shearer, Paine and Strong. True, Clarke gave his notes for $3,273.14, (R., p. 33, Int. 124,) as he says, to the Marine Bank, but in fact to nobody; he never paid these notes, and he so swears, and that they were delivered up to him by Mr. Beckwith, and he has destroyed them; payment of them was never enforced against him, and it was never intended to be.

The indorsements by the marshal on the execution, would, *prima facie*, show that payments were made by these several parties, but the facts show, that the payments were not made at the times, by the persons, and in the sums therein mentioned; and that these indorsements were made under the dictation of the plaintiff's attorney, is quite clear.

There are a variety of lesser facts mentioned in the various depositions, which sustain the view we have taken, but they will be observed by the court, and we refrain from commenting on them, as the argument is already longer than we would wish it. We, therefore, in concluding this point, respectfully urge, that these facts so clearly proven and uncontroverted as they are, show beyond doubt, that Shearer and Clarke were not *bona fide* purchasers and assignees of this judgment.

Upon our third point, we remark, that the authorities bearing upon the question of contribution in like cases to this, are almost uniform that it will not be enforced at law, or in equity. *Merryweather* v. *Nixon*, 8 Term, 186.

That was an action of assumpsit by one tort feasor against another, to recover contribution. They had been sued in an action on the case, for an injury to the reversion in a mill; the declaration contained a count in trover *for the machinery.* Judgment was against both defendants. The whole was levied on one, who paid it and brought his action for contribution against his co-defendant. Lord Kenyon, C. J., said, "that he had never before heard of such an action having been brought where the former recovery was for a *tort;* that the distinction was clear between this case and that of a joint judgment against several defendants in an action of assumpsit; and that this decision would not affect cases of *indemnity*, where one man employed another to do acts not unlawful in themselves, for the purpose of asserting a right."

It will be observed in this case, that there was a count in trover for the *machinery* which the tort feasors had jointly *converted.* There would seem to have been a strong equity to contribute at least to the extent of one-half of the value of the machinery appropriated by them jointly, but the court would not allow it, upon the reason which obtains in this class of cases, viz.: that *voluntary* wrong doers may be intimidated from committing the wrong by the danger of *each* being made responsible for all the consequences; and the above cited case was similar to the one in question in this case, in the fact, that both were voluntary, active, premeditated torts, affecting property and not the person, in which the tort feasors realized and appropriated property by and through the tort.

In the case of *Farebrother* v. *Ansley et al.*, 1 Camp. 343, it appears that Tompkins sued out a *fi. fa.* against Auberey; that the sheriff, Ansley, made out a warrant to his bound bailiff, Watkins, to levy under the writ; that Watkins seized the goods of one Bland under the writ, as and for the property of the defendant in the writ, Auberey; and that *the bailiff* employed the plaintiff, Farebrother, who was an *auctioneer*, to sell them, who did so; that thereupon, Bland, the owner, brought an action of trespass against the sheriff, the auctioneer, the bailiff, and Tompkins, and recovered judgment for £395 5*s.*, and the whole amount of the judgment was levied upon and paid by him, the auctioneer. Farebrother then brought this action of assumpsit on an implied promise to indemnify against the sheriff, and another, (who the other was, does not appear, but it could only have been the plaintiff in the suit, Tompkins,) who received the proceeds of the levy and sale of Bland's goods; but verdict was rendered for the defendants. Lord Ellenborough observed, soon after the plaintiff's case was opened, that he had "great doubts whether the action could be supported, as, according to the case of *Merriweather* v. *Nixon*, there was no contribution among joint wrong doers where there was a judgment against them jointly, and all the damages were levied against one of them; nor, even supposing that the plaintiff had been employed by the defendants, did it follow that they were bound to indemnify him, since a promise of indemnity was not to be implied, if one man committed a trespass at the request of another." And when his lordship came to sum up, he observed, "that the action now appeared to be brought by the plaintiff to be indemnified *against the consequences of his own blunder*," etc.

In the case of *Wilson* v. *Milner*, 2 Camp. 452, it appears that Milner, on the 20th February, 1809, sued out a *fi. fa.* upon a judgment against one George. The sheriff issued his warrant to Wilson, a bound bailiff, to levy £155 besides poundage. The bailiff, Wilson, made the money, and on the 22nd of Feb. paid over the £155 to Milner. On the first of March, a commission of bankrupt was sued out against George, and it was found he had committed an act of bankruptcy on the 19th of February. His assignees brought an action of trover against the sheriff, his bailiff, Wilson, and the plaintiff in the judgment, Milner, and recovered £152 18*s.* 6*d.* damages, together with costs; in all, £216. The whole of which was paid by the bailiff, Wilson, to the assignees.

The bailiff, Wilson, brought this action of assumpsit against Milner, the plaintiff in the *fi. fa.*, to recover complete indemnity for the damages *and costs.* But Lord Ellenborough in his opinion, says: "I think the plaintiff cannot recover on the count for money paid. Among joint tort feasors there is neither contribution nor implied promise of indemnity. But the £155 being paid to the defendant under a mistake respecting George's bankruptcy, I think it may be recovered as money had and received to the use of the plaintiff, who was answerable for it to the assignees."

It will be observed in this case, that the court would not allow the bailiff to recover any part of the costs of the action of trover, although the whole proceeding was for Milner's benefit.

In the case of *Thweatt's Adm'r* v. *Jones' Adm'r*, 1 Rand. 328, the doctrine of *contribution* is elaborately discussed in the opinions of the several judges, and the rule as therein stated, is, "when any burthen ought, from the relation of the parties, or in respect of property held by them, to be equally borne, and each party is in *æquali jure*, contribution is due, unless the claim to contribution has arisen out of some actual fraud or *voluntary wrong* in which the party claiming contribution has participated.

The case of *Acheson* v. *Miller*, 18 Ohio, 1, seems to be much in point, and has many features of resemblance to this case. Miller, Acheson and others were indorsers of a bill of exchange, drawn by Lewis and discounted by the Western Reserve Bank. The bank sued Lewis, and recovered judgment for $5,462.34, and afterwards sued the indorsers, and recovered a joint judgment against them for a like amount. The bank issued execution against Lewis, and levied on a stock of goods as the property of Lewis, sold them, and realized $3,135.73, but before the levy Lewis had sold the goods to Gilbert. The sheriff, fearful of difficulty, before the levy took a bond of indemnity from Miller, and three of the other indorsers, but Acheson, the other indorser, did not sign it. An action of trespass was brought by Gilbert against the sheriff, and the four indorsers who signed his bond of indemnity, and judgment recovered for $5,354.61. This *last* judgment the four indorsers paid, and Miller, who paid one-fourth of it, brings suit against Acheson, and claims for contribution, claiming that having paid one-fourth part of the judgment in the action of trespass, he is to be placed in the same situation he would have been had he actually paid one-fourth part of the $3,135.73 made on the execution in favor of the bank against Lewis, the principal debtor. It was not claimed that he actually paid one-fourth part of this latter sum, but that he paid one-fourth part of the greater sum which was recovered in the action of trespass for the identical goods which were sold to raise the lesser sum of $3,135.73; and the court below having rendered judgment for Miller, it was reversed by the Supreme Court, which, among other things, said: "Now this is not the case where one joint trespasser is calling upon his co-trespasser for contribution. If it were, I presume no one would doubt that this suit must fail, for I take it no principle is better established than that such suit cannot be maintained. * * * Besides, although by a judgment in trespass the goods taken and carried away become the goods of the defendant, yet if there are two or more defendants, and the judgment is collected of one, he cannot call upon his associates, those who become jointly interested with him in the property by the judgment, for contribution."

This case seems to recognize the doctrine, that where the trespass is voluntary and the trespassers actually jointly *share in the property*, yet if one pays the whole judgment recovered for the trespass, he can have no contribution, though in that case the effect of the payment of the judgment in trespass was to pay the original debt for which they were joint indorsers; but this is only an affirmance of the doctrine of Lord Kenyon, in *Merriweather* v. *Nixon.*

The case of *Nelson et al.* v. *Cook*, 17 Ill. 443, is a well con-considered one. This was an action brought by a sheriff for indemnity for levying an attachment wrongfully. The court say, "there is no *implication* of indemnity for their (sheriffs') trespasses and wrongs in the execution or attempt to execute process, put into their hands without any specific directions to do particular acts or take particular goods under it." This case recognizes and approves the law as laid down by Lords Kenyon and Ellenborough in the cases above cited, and contains a full array of the authorities on the subjects of *contribution* and *indemnity.*

Sedgwick on Damages, 2nd ed., p. 556, recognizes the same doctrine as to contribution, and cites the Ohio case as the authority for it.

The case of *Bailey* v. *Bussing*, 28 Conn. 455, recognizes an exception to the rule laid down in the foregoing authorities. In that case judgment was recovered against three stage coach proprietors, *copartners*, for negligently injuring a passenger; one copartner paid the judgment, and sued his copartner for contribution. It was held that he might recover. We think the case was decided correctly, and it does not contravene the doctrine of the above cases, for the judgment was a copartnership debt, for which all were liable, and the court quote *Merriweather* v. *Nixon*, and say it was decided "rightfully."

Upon defendant's second proposition, and ours in reply, we remark, granting that as these several plaintiffs in execution realized money upon the sale of Unna's property which was applied in part satisfaction of their several judgments against Sternberg & Isidor, and that it is but equitable, for that reason, that they should contribute to the payment of this judgment of Unna, ratably, then the question recurs, *who* should so contribute, and in what proportions should they contribute?

Now the doctrine in reference to equitable contribution, originates in the consideration "that those who have *assumed a common burden* ought to bear it equally. From this equitable obligation the law *implies* a contract, since all who have become jointly liable may reasonably be considered as mutually contracting among themselves with reference to the duty in conscience," (1 Parsons on Contracts, 32, note "d"); and the party paying the judgment is not confined to the other defendants *sued*, but may seek contribution against parties who were not sued, if they were in fact jointly liable for the debt, and assumed the burden in common (1 Parsons, p. 34, and note i). Now the argument of defendants is, that the four firms of Ross & Co., Shearer, Paine & Strong, Kohn & Co. and Selz & Cohen, having judgments against Sternberg & Isidor, levied their several executions upon this property of Unna's, thereby assuming a common burden, and they ought to bear it and its *consequences* equally; that all were jointly sued for the trespass and ought each to pay one-fourth of the damages recovered. But upon what principle of equitable contribution would this rule obtain, unless each of the four firms received *one fourth* of the money realized by the sheriff in the sale of the property of Unna. It does not appear in this record, nor is it anywhere pretended, that their judgments against Sternberg & Isidor were for the same amounts. The bill shows that the judgment in favor of Selz & Cohen was only $368.08. The recovery of Unna was $6,307.89, besides costs; and unless this included *exemplary* damages, it would represent the amount realized by sale of Unna's goods which was applied on the several executions, showing (as the executions were satisfied only *in part*) that the judgments of Ross & Co., Shearer & Co. and Kohn & Co. were much larger than that of Selz & Cohen. How then can the defendants demand of Selz & Cohen one-fourth of the judgment as their contributive share without showing that they received one fourth of the proceeds of the sales of Unna's goods. But by this rule of contribution sought to be established by defendants, upon what equitable principle can they call upon Leopold, who was only a surety in the bond of Selz & Cohen to the sheriff, to pay one-fourth of this judgment of Unna's? He did not get one-fourth of the proceeds of the goods; he got nothing, absolutely nothing; and does this equitable rule call upon him to pay the contributive share of his principals, Selz & Cohen? It is therefore manifest, that this rule will not bear scrutiny for a moment. Under its operation the sureties in the four several indemnity bonds to the sheriff, the attorney Huntington, against whom there was recovery by Unna in the action of trespass, and also the sheriff, should be allowed to go acquitted of any part of the common burden, as they realized nothing from the enterprise. And if the rule of contribution shall include in its operation all who technically assumed the common burden, principals, sureties, attorney and sheriff, then they must *contribute per capita*, although they were not all sued in the action of trespass, because they impliedly, if at all, assumed the common burden when they sued out the executions, signed the indemnity bonds, and made the levy and sale. This rule, then, would not visit upon Leopold one-fourth of the burden ; and as the record does not show how many sureties there were, therefore we cannot in this proceeding adjust the equities between the several parties.

But if in fact, as the proof clearly shows, this judgment is the property of the Rosses, and Shearer, Paine, and Strong, and they are seeking by its means to enforce contribution against Leopold, Selz & Cohen, the grossly inequitable character of the novel proceeding is seen in the fact, not only that Leopold was a mere surety, but that without the concurrence of Selz, Cohen and Leopold, or any of them, Ross & Co., and Shearer and Strong, sued out the writ of error to this court, allowed the cause to lie for years, and then caused it to be dismissed, and continued proceedings upon it until a judgment which was originally, on the 5th of March, 1859, but for $6,307.89, and $45.25 costs, finally amounted, December 17th, 1863, to the sum of $8,566.63, inclusive of interest, *costs in this court*, on execution, etc., and the interest of this complainant, Leopold, in this real estate is sold on an execution issued upon this judgment for $2,175, which is called, forsooth, *his* contributive share, visiting him with the costs of a writ of error, which they sued out without his consent, and the interest accumulating during all the time they thus hung the case up and delayed its settlement. They make the experiment of a writ of error without consulting him, and then abandon it at their pleasure, procure the judgment to be assigned, and coolly call upon this surety to share these costs and expenses with them. But it is insisted that even though the court may be satisfied that the Rosses and Shearer & Co. are the real owners of this judgment, and perverting the process of the court to enforce contribution against complainants, yet, as they have come into a court of equity to obtain relief, they shall first offer to do equity. That is, offer to pay what, in conscience, they ought to pay, upon the well known maxim that he who seeks equity shall do equity.

We answer, first, if Shearer and Clarke, the assignees, were the real owners of the judgment, then Ross & Co. and Shearer, Paine & Strong were not necessary parties, and even though they were, the complainants and the assignees had no subsisting equities to adjust between them, complainants could therefore make no offer to *do equity* towards them.

And we further answer, that it is clear as to complainant Leopold (aside from his agreement with Unna by which he bought his peace) that defendants have no equitable demand against him; their payment of the judgment did not vest title in him to any of the property of Unna seized on the several executions; nor did their payment of the judgment operate to his benefit in any manner, for although the judgment was nominally against him, it *really* was not, and Unna could not enforce it against him; he would be estopped from doing so by his agreement. Now, if Unna had not entered a *nolle prosequi* against the sheriff, but had obtained judgment against him also, and *he* had paid the judgment, the fact that he held the bond of indemnity of Leopold would have raised a strong equity in his favor; but we fail to perceive what fact or circumstance in this record, or out of it, growing out of the entire transaction, raises any equitable claim in favor of the defendants against Leopold, and it is out of *his* property they are making this so-called equitable contribution.

As to Selz, the co-complainant, if equitable contribution could be claimed by any of the defendants against him, this was not a proper suit in which to adjust it; the proper and necessary parties were not all before the court, and could not have been without rendering the bill multifarious. What possible interest could Leopold and Daniel L. Shearer and Clarke have in that question? None whatever, and the latter would have demurred to the bill for multifariousness.

It was further urged that the court had no jurisdiction of the cause, as the bill showed that Leopold had conveyed this real estate to an assignee for the benefit of his creditors, and the assignee had sold and conveyed it to one Scholkopf for $3,000, who was now the owner, subject to the prior lien of the Unna judgment. But the jurisdiction of the court was clear, first to order the proceedings under the *fi. fa.* stayed, and the judgment to be entered satisfied of record. The parties were proper parties, both complainants being defendants in the judgment; and as no part of the judgment was paid or satisfied of record, both complainants had an interest in preventing other levies upon that and other property, as well as a *capias* against their bodies, and if this real estate were thus taken from Scholkopf, then he would have recovered from Leopold's assignee the purchase-money, and to that amount reducing Leopold's assets.

But the second position of the defendants, as stated by us above, must necessarily concede that the judgment is not the property of Daniel L. Shearer and Clarke, but was *nominally* assigned to them, and *really* owned by the defendants, the Rosses, and Shearer, Paine & Strong, for if it really be owned *bona fide* by the assignees thereof, and they are not concluded by the agreement between Unna and complainants, then it is quite immaterial to consider or discuss the question as to whether it was in bad faith to make such an agreement.

If Shearer and Clarke are the owners of the judgment, and did not take it with the *onus* of the agreement, of course complainants can make no defense. If, however, they are not the owners, but the Rosses, and Shearer, Paine & Strong are the owners, they became such by *paying* it to Unna, and that is the end of the argument, for if really *paid*, though not satisfied *of record*, the court will order satisfaction to be entered in accordance with the prayer of the bill.

How then can we be drawn into an argument in this cause upon the other question, whether it is not equitable for complainants to pay a contributive share of the judgment? Manifestly that is not a question of any interest to the assignees of the judgment. They only know the defendants in the judgment *as such*, and care nothing about adjusting the mutual equities of defendants among themselves. The defendants, as such, are each and all liable to pay the judgment to the assignees if they were liable to pay the plaintiff therein. It is clear, therefore, that in this suit, any discussion as to the fairness and good faith of complainants in making the agreement with Unna, is quite out of place, and to refuse the relief herein prayed for, because the complainants ought in equity to contribute to the payment of the judgment, is to permit defendants to pervert the process of the court, not in enforcing equitable contribution against those who would be liable to make it, and in the proportions in which they would be so liable, but (as we have shown) against those who would not in any court of law or equity be liable for contribution to these defendants in *any amount*, and especially in the amount *extorted* from this *surety*, Leopold, being *one-fourth* of the judgment, interest and costs, including the costs in the writ of error to this court, in which latter complainants had no interest whatever, in no way were parties, and in no manner promoted.

But however foreign to this case, as we esteem it, may be the discussion of the question whether the agreement was fraudulent as to defendants in the judgment, yet as it seems to be the main spoke in their wheel, we do not shrink from its discussion, but emphatically deny it, and insist that the agreement was in all respects valid and *bona fide*.

It is not pretented in the answers or intimated in the proofs, that complainants agreed to do or did do aught else than abstain from further defense of said trespass suit. They in no manner participated in aiding the plaintiff therein to recover against their co-defendents; they simply retired from the active defense thereof, and left the other co-defendants to either *buy their peace* or try the issues of further litigation. Perhaps they had not been as active in promoting the proceedings which invited this trespass suit, and did not, therefore, incur the active hostility of the plaintiff therein, and the plaintiff may have felt that the other defendants who had the large judgments were the active promoters of the levies which had been made upon his property, and were the real parties who should be made to respond; however this may be, the agreement was not made in *fact* to defraud the other defendants, for *non constat* that the plaintiff would obtain judgment or that the other defendants might not upon consultation with *their* counsel, after further deliberation, also conclude terms of compromise with the plaintiff and procure a dismissal of the suit. Was the agreement then fraudulent in *law*, as against the other defendants? We cannot perceive upon what principle it can be so held.

It was the right of the plaintiff to levy his execution of *fi. fa.* upon the property of any defendant and make the entire judgment from him, without regard to the fact whether he were a principal or surety in the indemnifying bonds given the sheriff. If this was the right of the plaintiff, could it make any difference that he had *agreed* with certain of the defendants not to levy upon their property? Could not the plaintiff in this form of action have entered a *nolle prosequi* against any of the defendants upon agreement with them or upon his own motion, being persuaded that his chances for a larger recovery against the remainder would thereby be promoted—pursuing the *real* offenders alone, rather than the real and nominal, jointly? Most surely. And could these defendants have then taken advantage of such *nolle prosequi* to defeat the plaintiff's recovery? We imagine such a position will not be seriously maintained. A broad distinction has always obtained between tort feasors and co-contractors.

The release of one of two joint obligors is a release of both, but such is not the law as to tort feasors. The plaintiff in this case, instead of proceeding to judgment nominally, as he did against all these defendants, might then (after he had released the complainants) have entered a *nolle prosequi* as to them, as was actually done as to certain others, and such a step would not have released the other defendants, and he could then have prosecuted his suit against the remainder; and if this were done without any agreement with complainants, the other defendants could not have pleaded it in bar, or made any complaint against the complainants; much more could they not, after judgment against them in said suit, have sued complainants for contribution.

If there was no liability upon the part of complainants to coutribute to the defendants who paid the judgment, of course it being optional with the plaintiff Unna to collect it from any of them, it was no fraud upon the others to coerce payment from defendants, either with or without agreement between them and Unna.

But let us consider the matter on the other hypothesis, that in this form of action these tort feasors were all ratably liable to contribute to any of them who should be compelled to pay such judgment.

Then the agreement between Unna and these complainants was no fraud upon the other defendants, for either such agreement would *release* all the defendants, or it would, as to them, be null and void. If there was liability for contribution, no agreement between complainants and Unna could release them from such liability, and such agreement could not in any manner operate to their injury, and therefore it lacked the essential ingredient to constitute it a fraud upon them. And if such agreement operated to release all the defendants, that would authorize them to plead the fact in bar of the recovery, or, if not discovered until after judgment, to obtain an injunction against all proceedings to enforce its collection, either by the plaintiff Unna or his assignee.

We have not stopped to consider whether such an agreement was void as against public policy, or *good morals*, as we do not conceive that any ingenuity could place it in either category.

We therefore say, in recapitulation, that the judgment ought not to be enforced against complainants, and they should be relieved against it in a court of equity—

1. Because of their agreement with Unna, which was valid and binding upon him.

2. If Shearer and Clarke were *bona fide* assignees of the judgment, it was binding upon them, and they have no better standing in a court of equity against the equity of complainants than their assignor, Unna.

3. That in fact the judgment was paid by Ross & Co. and Shearer & Co., and should be canceled and satisfied of record by the decree of this court.

4. That being so paid, it is a fraud upon complainants to allow it to stand open and unsatisfied of record, in the names of Shearer and Clarke as assignees, and to permit Ross & Co.

and Shearer & Co. thus to enforce partial satisfaction of complainants, by way of collecting contribution from them.

5. That contribution would not be enforced, either at law or in equity, and if it would, that it would not be enforced by these defendants, Ross & Co. and Shearer & Co., against Leopold, a mere surety.

6. That if it would be enforced against Selz, it would not be in the proportion of one-fourth, but only in proportion to the amount of money realized by him and them respectively.

7. That complainants should not be denied relief for not offering to do equity in their bill, because the bill in that case would have been multifarious, and this cannot apply in any event to the surety, Leopold.

We therefore respectfully submit that this decree should be reversed, and the cause remanded, etc.

SAMUEL B. GOOKINS, AND
JAMES H. ROBERTS,
Solicitors for Plaintiffs in Error.

SUPPLEMENTAL BRIEF.

Since printing the foregoing argument, the brief for defendants in error, by their counsel, John J. McKinnon, Esq., has been placed in our hands; and in it we find, among other matter, the opinion of his Honor, Drummond, J., who heard this cause below, on dismissing the bill. Although we designed, in the argument already made, to answer, so far as we were able, the positions assumed by the learned judge, yet we feel constrained to notice what he says in respect to the agreement between Unna and Selz & Leopold. He says that he is prepared to admit the principle that the assignee of a judgment takes it subject to the equities between the parties to it; "but hardly thinks that such an agreement as this, which is not an equitable but an inequitable agreement, *so far* as the *other defendants are concerned*, can be set up in a case like this to protect them from a liability which, when the judgment was obtained, was as binding on them as on the other parties, defendants, in this case." But the learned judge assumes that Shearer and Clarke are the *bona fide* assignees of the judgment, and for the sake of his argument, let it be conceded. Why, then, cannot the agreement be set up against the *assignees*, if it might be against Unna? Can it be logically argued that because it was inequitable as to the *other defendants*, it was also inequitable as to Unna? Certainly not. Therefore the assignees of Unna cannot protect themselves under the shelter of the equities of the co-defendants, Ross *et al.* But to say that the agreement was inequitable, so far as the other defendants are concerned, is to beg the question, and also to concede that the other defendants are the real parties seeking to enforce the judgment, and the counsel for defendants in error nowhere concedes this. We, however, most emphatically say that it would be a palpable fraud to permit Unna to repudiate an agreement by which he induced complainants to forego making defense to the suit, and withdraw with their counsel from the court room, and then turn upon them and enforce collection of the judgment. And as between Unna and these complainonts, it would be grossly wrong and inequitable for him to enforce the judgment against them in the face and eyes of the agreement. Therefore his assignees shall not be allowed to do it.

It is further said that this agreement was *secret.* The proof shows to the contrary. The complainants, with their counsel, at the time of the trial *publicly* withdrew from the court room in the presence of the court, and the other defendants and their counsel, who saw fit to make defense.

But suppose complainants had not appeared in court at all, or employed counsel, but had made the agreement without the knowledge of their co-defendants, what cause of complaint could they have? Complainants never agreed with defendants to make common cause in defending the suit. Each employed his own attorney, and made defense in his own way, and was at liberty to retire or go through, as he pleased. His Honor, Judge Drummond, says it was not acting "*fairly,*" "in good faith" to their co-defendants, to make such an agreement. We respectfully urge that there was no obligation, *legal or equitable*, to make common defense to the suit, or, after commencing it, to progress to the end, unless the defendants had mutually agreed so to do, but this is not pretended, and it must always be borne in mind that complainants, after withdrawing from the defense, in no manner participated in the prosecution, or withheld any proof in their possession from the use of their co-defendants. They were simply *passive*, and this was their right, and it was not in "bad faith" to the other defendants, as they never agreed, expressly or by implication, to contribute to the payment of the costs of prosecution or counsel fees. It nowhere appears in the testimony of any of the defendants that there was at any stage of the business, from the original levies upon Unna's goods, until the conclusion of the trespass suit, any concert or co-operation between these complainants and their co-defendants. In fact, no word ever passed between them. The attorney, Huntington, acted for them all separately in suing out and levying the executions, and the complainant Selz was actually absent in New York at the time, as the bill alleges.

Now, if the case is not a proper one for contribution, the question for consideration is, Will a court of equity interpose to prevent the process of the court from being perverted to enforce that which the law forbids? for, if it will not, then there is at once an end of the rule that there shall be no contribution among tort feasors, and the wholesome principle upon which the rule is founded, (to wit, "that voluntary wrong-doers may be intimidated from doing the wrong by the danger of *each* being made liable for all the consequences,") becomes obsolete, for it will only be necessary for any of the defendants to furnish the money to a third person to whom the judgment may be assigned, and through him they may enforce its collection in whole or in part from the other defendants, and because it is not satisfied of *record*, a court of equity will refuse to interpose its aid, because the parties were joint tort feasors.

It is true, as a general rule, that a court of equity will leave persons who are in *pari delicto* to adjust their mutual wrongs as best they may, and will deny its aid to either as against the other; but while this is true, and conceding that these parties all stood in that category, a court of equity would not permit one wrong-doer to use the process of the law as an engine to harass and oppress another, but would in such case interpose its strong arm and wrest from him that which he was thus unlawfully employing. While a court of equity would not intervene to *assist* one wrong-doer when he had voluntarily placed himself in the power of another, yet it would not permit that other to use *process* unlawfully against him. To illustrate: assuming that this judgment was paid by the Rosses, and Shearer, Paine & Strong, and that it was nominally assigned to Shearer and Clarke in order to collect the *whole* of it from this surety, Leopold, would a court of equity refuse relief in such case? We think not. And if it is *inequitable* that he, a *surety*, should pay the whole, what principle will stay the hand of a court of equity in protecting him from paying any part of it less than the whole? And if a court of equity would interpose in such case to restrain the collection of the *whole* from the complainant, Leopold, would it not also restrain the collection of the *whole* or more than his contributive share from the complainant, Selz? The error of the learned judge below, in this branch of the case, consisted in assuming that Selz & Leopold were equitably bound to pay *one-fourth* of the judgment; but upon what evidence this was founded, we are not able to learn from the pleadings or proofs. And his *decision* assumed that Ross & Co. and Shearer, Paine & Strong had *paid* the judgment and were enforcing contribution of one-fourth from complainant, though he *argues* that Shearer and Clarke were the *bona fide* assignees of it, and were only enforcing *payment*. With the most perfect respect, we submit that the argument is inconsistent with itself, for either Shearer and Clarke were owners, and if so, the agreement with Unna equitably estopped them as his assignees, (even though it were inequitable towards the co-defendants,) or Ross & Co. and Shearer, Paine & Strong had *paid* the judgment and were seeking contribution in this unlawful mode, and if the latter were the case, a court of equity ought to be satisfied that the contribution was sought substantially in the proportions in which it ought to be paid and from the persons only who should pay it, and in this latter case, where it appears that the process of the court is being employed irregularly and unlawfully, and by persons not entitled so to do, *they* should make it appear affirmatively and clearly to the court, that although they are unlawfully employing its process, the effect of their illegal act will be to settle the rights of all parties upon an equitable basis. We respectfully insist, that the onus was upon them to show, to the satisfaction of the chancellor, that the case was one *for contribution*, and being such, although their proceeding was irregular, novel and unlawful, yet that substantial justice would be done by permitting it to work through to the end.

But the counsel for the other side abandons the position and does not pretend to argue that there is contribution in such a case as this, although the learned judge below intimated that there was doubt upon the point, and this concession we esteem an abandonment of the whole field. It is true that in this, the counsel is but consistent with his position in the court below, and we have arrayed the authorities on the point to meet this *doubt* suggested by his Honor.

The application and limitations of the maxim, "*In pari delicto potior est conditio defendentis,*" will befound discussed in Broom's Legal Maxims, *p. 567 *et seq.*, in which the doctrine is stated that where the plaintiff's case can only be made out through and by the aid of the illegal transaction to which he was himself a party, there the court will refuse its aid, which is just the case with these defendants, Ross & Co. and Shearer, Paine & Strong, employing the *fi. fa.* to compel a contribution which the court would not on application enforce, but from the policy of the law refuse. And will a court of equity permit them to do *indirectly* and by the abuse of the process of the law, what it would not permit to be done directly and under the forms of law? We think not. Let these defendants, Ross & Co. and Shearer, Paine & Strong, if they are entitled to contribution, enforce it in a lawful way and against those only who should contribute, for if this be collected out of Leopold, then he will be compelled to sue the others, which would lead to circuity of action.

GOOKINS & ROBERTS.

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[illegible] AND OTHERS

[illegible]

[illegible]

[illegible]

IN THE

SUPREME COURT

OF THE UNITED STATES.

DECEMBER TERM, A. D. 1867.

MORRIS SELZ AND ANOTHER, *Appellants*,

vs.

LEVI J. UNNA AND OTHERS, *Appellees.*

APPEAL IN CHANCERY.

ARGUMENT OF JNO. J. McKINNON,
For Appellees.

CHICAGO:
Beach & Barnard, 122 and 124 Clark St.
1867.

STATEMENT.

This is a suit in Chancery—a simple statement whereof will at once show it to belong to a class that never ought to find a place on the records of any Court.

Stripped of all glossary, the *sole* and *only* relief asked or prayed for by the bill, is an injunction to restrain the Marshal from completing a sale of real estate, in and to which complainants say and swear they have no *right*, *title* or *interest*, and for and on account of which they are in no manner or way liable.

The case, however, as it stands on the record, presents so many remarkable phases, that we beg the indulgence of the Court while we give a detailed statement of the facts whereon it is predicated.

In the year 1858, David Sternberg and Edward Isidor were engaged in business at Chicago, under the firm name and style of "Sternberg & Isidore," and in the course thereof became indebted to every one whom they could induce to sell them on credit.

On the 8th day of May, A. D. 1858, Edward Isidore, one of the members of this hopeful partnership, upon a debt due by his firm, confessed a judgment for the sum of three hundred and sixty-two dollars and eight cents, in the Cook County Court of Common Pleas, in favor of Morris Selz and Abraham Cohen, then doing business at Chicago, under the name and style of Selz & Cohen. On this judgment an execution issued and was placed in the hands of the Sheriff of Cook County, to execute.

At the same time, similar executions issued against Sternberg & Isidore on judgments in behalf of Henry A. Kohn and Joseph Kohn, doing business under the name and style of H. A. Kohn & Brother, and William M. Ross and John H. Ross, doing business under the name and style of Wm. M. Ross & Co., and Leonard B. Shearer, William W. Strong and John S. Paine, doing business under the name and style of Shearer, Paine & Strong.

See printed Record, p. 2.

These four executions were, by direction of John M. Huntington, the attorney of Selz & Cohen, levied on certain goods and chattels, as the property of Edward Isidore, of the firm of Sternberg & Isidore, which was subsequently, by the Sheriff *duly* sold in part satisfaction thereof.

See printed Record, p. 2.

Before making sale, the Sheriff demanded and received from the execution plaintiffs indemnifying bonds. The complainant, Henry Leopold, become surety on the bond of Selz & Cohen.

See printed Record, p. 2.

Thus terminated, in part satisfaction of the debts of honest creditors, the first act of this new drama, but as the curtain again raised, it was obvious the play had changed, and "*Israel's children*" stood arrayed against their *Gentile brothers*.

Soon after the sale under these executions, Levi J. Unna made his appearance on the stage, claimed to be the owner, by purchase from Sternberg & Isidore, of the goods and chattels so levied on and sold, brought an action of trespass in the Circuit Court of the United States for the Northern District of Illinois against the several execution plaintiffs and their sureties, and on the 5th day of March, 1859, recovered judgment in the sum of six thousand three hundred and seven dollars and eighty-nine cents, and forty-five dollars and twenty-five cents costs of suit, against Henry A. Kohn, Joseph Kohn, William M. Ross, John H. Ross, *Morris Selz*, *Abraham Cohen*, *Henry Leopold*, John M. Huntington, Leonard B. Shearer and William W. Strong.

See printed Record, p. 3.

How he succeeded in establishing this fraudulent claim, is admirably stated by the complainants in their bill, and at once unveils and presents to view a *swindle* of no mean conception.

The bill states (printed Rec. p. 3,) that at the October term, A. D. 1858, the action was tried by a jury, who, failing to agree upon a verdict, were discharged by the Court, and the case continued to the succeeding term. That *afterwards*, and before the trial at which judgment was obtained, Unna agreed with the complainants, Morris Selz and Henry Leopold, that if *they* would desist and abstain from *all participation in the preparation and conduct of the defense thereof*, he would protect and save them harmless from all loss and damage, under whatever judgment he might recover, and would so control and direct the collection thereof that no part of the same should be paid by or collected from them under any execution issued thereon; and that in pursuance of such agreement, they and their counsel withdrew from the defense of the suit.

This statement of itself shows not only a most diabolical swindle, but plainly says: "The claim of Unna was a fraud, " which we knew all about. We could have defeated it; " but since, by this secret arrangement, we are to be the " gainer, and our allies in the common cause the loser, let " the fraud go on, and we will wince at it."

At the same time, similar executions issued against Sternberg & Isidore on judgments in behalf of Henry A. Kohn and Joseph Kohn, doing business under the name and style of H. A. Kohn & Brother, and William M. Ross and John H. Ross, doing business under the name and style of Wm. M. Ross & Co., and Leonard B. Shearer, William W. Strong and John S. Paine, doing business under the name and style of Shearer, Paine & Strong.

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See printed Record, p. 3.

How he succeeded in establishing this fraudulent claim, is admirably stated by the complainants in their bill, and at once unveils and presents to view a *swindle* of no mean conception.

The bill states (printed Rec. p. 3,) that at the October term, A. D. 1858, the action was tried by a jury, who, failing to agree upon a verdict, were discharged by the Court, and the case continued to the succeeding term. That *afterwards*, and before the trial at which judgment was obtained, Unna agreed with the complainants, Morris Selz and Henry Leopold, that if *they* would desist and abstain from *all participation in the preparation and conduct of the defense thereof*, he would protect and save them harmless from all loss and damage, under whatever judgment he might recover, and would so control and direct the collection thereof that no part of the same should be paid by or collected from them under any execution issued thereon; and that in pursuance of such agreement, they and their counsel withdrew from the defense of the suit.

This statement of itself shows not only a most diabolical swindle, but plainly says: "The claim of Unna was a fraud, " which we knew all about. We could have defeated it; " but since, by this secret arrangement, we are to be the " gainer, and our allies in the common cause the loser, let " the fraud go on, and we will wince at it."

After recovery of this judgment, William M. Ross, John H. Ross, Leonard B. Shearer and William W. Strong sued out a writ of error thereon to this Court, pending which, on the 18th day of October, 1860, Daniel L. Shearer and William Clark, for the sum of six thousand five hundred and forty-six dollars and twenty-eight cents, purchased the judgment, and received from Unna the following assignment, wherein and whereby it will be seen that *he* not only represented it to be in full force and virtue, but as evidence of his sincerity in that regard, contracted for an apartment in the Illinois State Penitentiary, in the event his representations proved untrue.

See printed Record, p. 9.

"Levi J. Unna, plaintiff, vs. Henry A. Kohn, Joseph "Kohn, William M. Ross, John H. Ross, Morris Selz, "Abraham Cohen, Henry Leopold, John M. Huntington, "Leonard B. Shearer and William W. Strong, defend-"ants. Action of trespass.

"For and in consideration of the sum of six thousand "five hundred and forty-six dollars and twenty-eight "cents, to me in hand paid by Daniel L. Shearer and "William Clarke, the receipt whereof is hereby acknow-"ledged, I do hereby grant, bargain, sell and assign to "the said Daniel L. Shearer and William Clarke, the "judgment by me recovered in the above entitled cause, "against the above named defendants, for six thousand "three hundred and seven dollars and eighty-nine cents, "damages, and two hundred and thirty-eight dollars and "thirty-nine cents, costs; to have and to hold the same "to the said Daniel L. Shearer and William Clarke, their "executors, administrators and assigns forever.

"And I do hereby agree, covenant and represent to "and with the said Daniel L. Shearer and William

" Clarke, *that I have made, done or suffered no act or thing* " *by which the said judgment is in any manner impaired* " *or lessened in value;* that no part of the same has been " paid, released or assigned, (except to Messrs. Van Bu- " ren, Tuley and Garey an assignment was made of fif- " teen hundred dollars thereof, which they have re-as- " signed to me,) and that said judgment now exists in full " force and virtue, to all intents and purposes, except so " far as the same may be affected by the writ of error " thereupon now pending in the Supreme Court of the " United States, *meaning and intending hereby to make* " *such representations to the said Daniel L. Shearer and* " *William Clarke as would, if false, bring me within the* " *provisions of the* 153*d section of chapter* 30 *of the revised* " *statutes of* 1845, *of the State Illinois:* Provided, that " so much of said money as is for costs, shall be paid into " said Court, for the use of the persons who have rendered " the services for which said costs are taxed, or for my " use where I have paid those persons; and provided " further, that the said Daniel L. Shearer and William " Clarke take the said judgment at their own risk as to " the result of said writ of error, or the solvency of said " defendants, and that no costs or expenses shall hereaf- " ter be incurred upon my account, in or about the collec- " tion of the said judgment, but that all costs, either in " the Supreme Court, on said writ of error, or in the Cir- " cuit Court, or on executions to be issued upon said judg- " ment, shall be borne by the said Daniel L. Shearer and " William Clarke.

" Witness my hand and seal, this 18th day of October, " A. D. 1860.

" LEVI J. UNNA. [Seal.]

" Witnesses: M. F. TULEY,
" E. GARY."

This purchase was perfected through Judge Beckwith, acting for Daniel L. Shearer and William Clark, and Messrs. Van Buren and Gary, acting for Unna.

See printed Record, p. 65.

Under the advice of Judge Beckwith, the writ of error was not prosecuted in the Supreme Court. Wherefor the case was dismissed, for want of prosecution, and on the 10th of October, 1863, the mandate of this Court dismissing the same was filed in the Circuit Court, and an order made docketing and dismissing it, at costs of plaintiffs in error.

See printed Record, p. 64.

Afterwards, on the 19th day of October, 1863, the owners of the judgment, Shearer and Clark, through their attorneys, caused execution to be issued thereon, and placed in the hands of the Marshal of the District. To make the money on this execution, the Marshal was about to levy on and sell the property of the defendants, Henry A. and Joseph Kohn; whereupon Kohn & Brother, through their counsel, Mr. Van Buren, applied to the attorneys of the judgment creditors, and stated their readiness to pay their share, or one-fourth part of the judgment, if Ross & Co., Shearer, Paine & Strong and Selz & Cohen would pay their share, and insisted that it would be unfair to collect the whole amount of the judgment from them, and let the other parties go free.

Ross & Co. and Shearer, Paine & Strong proposed to pay their share, or one fourth each, but Selz, Cohen & Leopold refused to pay or do anything, while their attorney, Mr. Huntington, was execution proof, and bade defiance.

Thus circumstanced, Henry A. Kohn, of the firm of

Kohn & Brother, proposed to pay one-fourth part of the judgment, if Ross & Co. and Shearer & Strong would each pay a fourth part thereof, and that if the Marshal would levy the other fourth part on certain real estate, formerly the property of Leopold, and still subject to the judgment, he would bid it in, and pay the one-fourth part of the judgment which Selz, Cohen & Leopold ought to pay.

This fair and equitable arrangement was carried out by Kohn & Brothers, Ross & Co. and Shearer & Strong each paying one-fourth of the judgment. The execution, with these amounts endorsed on it, was levied on a tract of real estate situate in the city of Chicago, formerly the property of Henry Leopold, the fee to which then was and still is in one Henry Scholkopf.

See printed Record, p. 5.

Soon after this levy, and before sale, the complainants exhibited their bill in the Circuit Court of the United States, for the Northern District of Illinois, stating therein, among other things, the confession of judgment in their favor by Isidore, the issuance of execution thereon, as well as on similar judgments in favor of Kohn & Brother, Ross & Co. and Shearer, Paine & Strong, and levy thereof by direction of their attorney, John M. Huntington; the suit in trespass by Unna, their agreement with him and withdrawal from the suit, and his recovery of judgment for the sum of six thousand three hundred and fifty-three dollars and fourteen cents; that Ross & Co. and Shearer & Strong sued out a writ of error, pending which, Unna assigned the judgment to Daniel L. Shearer and William Clark. Following this statement, the bill charges that William M. Ross, John H. Ross, Leonard B. Shearer and William W. Strong paid and satisfied the judgment and all costs, and that the assignment was not *bona fide* nor for value, but made with intent on the part of William M. Ross, John H. Ross, Leonard B. Shearer and William W. Strong, " to enforce contribution from complainants."

After this famous charge, the bill further states that William M. Ross, John H. Ross, Leonard B. Shearer and William W. Strong, pretending that the judgment had been purchased by Daniel L. Shearer and William Clark, caused execution to be issued thereon, and levied on all the interest of Leopold in sub-lot two of block nineteen of the Canal Trustees' sub-division of fractional section fifteen addition to Chicago, and purposed selling the same under such exection, in order to compel the complainants to reimburse them, in part, the money so paid in satisfaction of the judgment and costs, and that the Marshal caused advertisement to be made pursuant to law, that the real estate so levied on would be sold on the 17th day of December, 1863, at the Court House, in Chicago.

The bill then shows that the complainants have no interest of any nature or kind whatever in the real estate so levied on, and that the title of Leopold thereto, having some years previously passed out of him by simple quit claim and assignment for the benefit of creditors, he could, in no manner or way, be injured by a sale thereof under this execution.

The statement in the bill is, " that about the first day " of April, 1861, Leopold and one Benedict Sclossman, as " carpenters, made an assignment of their property and effects to one Emanuel Frankenthal for the benefit of their " creditors, and at the same time, by way of convenience, " executed a quit claim deed to Frankenthal, for this tract " of real estate. That the assets of Leopold and Sclossman " were insufficient to pay their debts; that on the 15th day of

" September, 1863, the real estate was sold and conveyed
" by Frankenthal to Henry Scholkopf for the sum of three
" thousand dollars; that Scholkopf paid the purchase
" money to Frankenthal, and is now in possession there-
" of."

Holding in view the fact that Scholkopf is not a party to the record, the most extraordinary feature of this extraordinary bill, is the peculiar relief asked for. The bill prays an injunction against Levi J. Unna, Daniel L. Shearer, William Clark, William M. Ross, John H. Ross, Leonard B. Shearer, from proceeding further in the sale of the real estate so levied on, until the further order of this Court, and upon final hearing, to be enjoined from further proceeding to collect the judgment, and that the same might be declared satisfied.

The defendants, William Clark, William M. Ross, John H. Ross and William Strong answered this bill, denying the equity thereof, whereupon the complainants moved the Court for an injunction to stay the sale. This motion the Court denied, and the Marshal sold the premises to the defendant, Henry A. Kohn, for the sum of two thousand one hundred and seventy-five dollars, and made and delivered to him a certificate of sale, which entitled him to a deed at the expiration of fifteen months, unless the premises were redeemed according to law.

On the 25th of March, A. D. 1865, more than fifteen months after the date of sale, the complainants filed in Court their supplemental bill, reciting the original answers of defendants, the proceedings had thereon, that to substantiate the same they had taken testimony and proofs, and then by way of supplement, state that previous to filing their original bill, and about the time of the second trial for trespass, and making of the agreement between them and Unna, Henry A. Kohn had full knowledge and notice of such agreement, and that H. A. Kohn & Bro., at the same time, made a similar agreement with Unna in regard to their liability on such judgment, and that, notwithstanding his knowledge and agreement in that respect, he subsequently made the arrangement already stated, whereby Kohn & Bro. paid one-fourth of the judgment, and also purchased and paid for the interest of Henry Leopold in the real estate described. This bill prays Henry and Joseph Kohn be made parties thereto, and answer the same *under oath;* that Henry A. Kohn be enjoined and restrained from receiving a deed from the marshal for said real estate sold him, or interferring with such real estate, assigning or selling the certificate of purchase, and that the Court would direct the marshal not to make and deliver a deed therefor to him.

To this bill Henry A. and Joseph Kohn entered an appearance, put in an answer denying, in the most positive and *full* manner, all the equity thereof, and especially denying all knowledge of the fraudulent arrangemement with Unna. To this answer the complainants filed a replication, and without attempting to disprove or controvert the answer, set the cause down for hearing, and moved the Court for an injunction as prayed for in their bill, whereupon Judge DRUMMOND took the case under advisement, and after mature deliberation, disposed of it in these words:

" It is necessary that we should undersrand some of the " facts, in order to appreciate properly the views of the " Court as to the law of the case.

" There was a firm here, some years ago, by the name " of Isidore & Sternberg, which became indebted to va- " rious parties; among others, to Selz & Cohen, Strong &

" Paine. These creditors of Isidore & Sternberg obtained judgment by confession, against Isidore, one of " the partners, sued out execution upon those judgments, " and levied upon property as the property of Isidore and " of the firm of Isidore & Sternberg.

" There was some question, apparently, on the part of " the Sheriff as to the right of property, and before he " would proceed, he required an indemnity bond from all " the various plaintiffs, and bonds were accordingly given " to the Sheriff, and he thereupon seized and sold the " property.

" Unna claimed this property as his own. He brought " an action of trespass against various parties, including " the sureties in the indemnity bonds, in this Court, and " finally obtained judgment in 1859 against them for over " six thousand dollars. When this judgment was obtained, some of the parties were dissatisfied with it, and " sued a writ of error to the Supreme Court of the United " States. The writ of error was dismissed, and the judgment of this Court thereupon became operative against " the various defendants. Of course Selz, of the firm of " Selz & Cohen, and Leopold, their surety, who are the " plaintiffs in this bill, were defendants in that judgment, " and became liable, with the other defendants, to pay the " the judgment to Unna.

" On the 18th of October, Unna assigned the judgment " to Daniel L. Shearer, a brother of a member of the firm " of Shearer, Strong & Paine, and to William Clark, of " this city, they paying to Unna the face of the judgment " and costs, and after the assignment of the judgment by " Unna to Shearer and Clark, they issued a writ of execution to collect it of the various defendants. Thereupon " this bill was filed, alleging these facts, and also, among

" other things, that before the final judgment was ob-
" tained in this Court, Selz and Leopold agreed with Un-
" na that they would abandon the defense of the suit, and
" withdraw from it, in consideration that Unna was not
" to prosecute them upon any judgment he might obtain,
" and not to levy on their property for the whole or any
" part of it. Alleging further, that the assignment which
" was made to Shearer and Clark was colorable merely,
" and that, in point of fact, the other parties to the judg-
" ment had actually paid it to Unna,—that is, William
" M. Ross & Co. and Shearer, Strong & Paine,—and con-
" sequently, that the judgment being paid, it was inequi-
" table that these assignees of the judgment should prose-
" cute the defendants, in order to have it paid over again.
" These are substantially the allegations of the bill.

" There is a supplemental bill, which alleges that, after
" the original bill was filed, an arrangement was made by
" which certain property, which had been levied upon as
" the property of Leopold, should be sold, and that Kohn,
" one of the parties defendant to the judgment, should bid
" it off, for the purpose of compelling Selz & Leopold to
" pay their proportion of the judgment; and that there
" was an arrangement by which these various parties were
" to pay, each, one-quarter of the judgment,—William M.
" Ross & Co., Kohn & Brother, Shearer, Strong & Paine
" and Selz & Leopold.

" Now this, I think, is stating substantially what is set
" forth in the original and supplemental bills, and the
" question is, whether the plaintiffs are entitled to the re-
" lief which they ask, viz: that the parties shall not be
" permitted to collect any portion of this judgment off the
" property of Leopold, on the ground that it has, in point
" of fact, been paid.

" The arrangement between Selz & Leopold and Unna " is clearly proved by the deposition of Sternberg, in consequence of which, they withdrew from the defense of " the case. I think it is clearly shown, in relation to the " assignment of the judgment to Shearer and Clark, that " it was made through the instrumentality of William M. " Ross & Co., operating on Clark, and of Shearer, Strong " & Paine, on Daniel L. Shearer, the brother of one of " the members of that firm. The negotiations with Clark " were initiated and consummated by their counsel, Mr. " Beckwith, but the money that was actually paid by " Clark, came from William M. Ross & Co. That appears clearly from the testimony of Mr. Long, the teller " of the Marine Bank. What was actually paid to Unna " by Shearer and Clark, was certificates of deposit of the " Marine Bank and the Marine and Fire Insurance Company, of which Mr. Long was the teller. And on the " 18th of October, 1860, various certificates of deposit were " issued to Clark, for which they received the check of " William M. Ross & Co., so that the money came from " the latter; but for that, it appears, Clark gave his notes, " payable to his own order, which, as he says, he supposed " were discounted in the Marine Bank. The money of " Shearer, which was paid, and for which similar certificates of deposit were received, were the proceeds of a " certificate of deposit on a Boston bank, which was " turned over to the Marine Bank, and for which those " certificates of deposit of the Marine Bank were issued; " which certificate of deposit of the Boston bank it is " clear, I think, was issued on the check of Shearer & " Paine on that Boston bank, so that the money for the " assignment of the judgment came from William M. Ross " & Co. and from Shearer & Paine.

" But, admitting that it is so, what is the consequence

" of it? What is the position of these plaintiffs Selz &
" Leopold? They were parties to the judgment, in common with William M. Ross & Co., and Kohns, and
" Shearer, Strong & Paine, on which they were liable. It
" was competent, undoubtedly, for Unna, while he owned
" the judgment, to proceed against any one or all of the
" parties, to satisfy the judgment. There was this difficulty, possibly, in the way, so far as the parties themselves were concerned, that they were, or might be,
" treated as wrong-doers, and if Unna proceeded against
" one, and if it were paid voluntarily or by a levy on his
" own property, there was some doubt, perhaps, whether
" he might have contribution against the rest. Of course,
" the parties were desirous that all should contribute.

" They had embarked together in a common cause,—
" very possibly in good faith,—believing that it was the
" property of Isidore, and they had failed, and become liable for a very considerable amount; and the question
" with them was, if they knew of the arrangement made
" by Selz & Leopold with Unna, to avoid the effect of it;
" and it is quite probable, I think, from what appears in
" the case, that it was through the promptings of some of
" the defendants that this assignment was made; and it
" may be conceded, for the very purpose of preventing
" the consummation of the arrangement made by Selz, Leopold and Unna, and in order to compel them to pay
" their share of the judgment. And the question is,
" whether, if it was really on the part of Clark and Shearer a *bona fide* assignment, and not a payment by the defendants, and so understood between the parties, they
" had not the right to do that, and I think they had. It
" was not acting fairly toward their other co-defendants,
" for Selz & Leopold to make such an arrangement with
" Unna.

" They had already had one trial in the case, or rather " one hearing, in which the jury disagreed. They had all " acted together in a common cause, and after that, some " of the parties chose to abandon their co defendants, and " make a private, secret arrangement with Unna, the " plaintiff, by which they were to be let off scot free. " That certainly was not in good faith to the other defendants, and yet it is under such a contract or agreement " that they come in and ask the favorable consideration of " a Court of Equity to releive and protect them; and, certainly, I don't feel inclined to do it, unless there is some " stringent rule of equity which makes it obligatory.

" Now, was this an actual payment of the judgment by " these defendants, William M. Ross & Co. and Shearer, " Strong & Paine? Clark borrowed the money, he says, " of the Marine Bank. More correctly speaking, he borrowed it of William M. Ross & Co., through the instrumentality or agency of the Marine Bank. He gave his " notes for that money. Now, there is nothing in the case " to show but that he would have been legally responsible " to the holders for those notes. Daniel L. Shearer " got the money from Shearer & Paine, and unless " there was something more than appears in this case, I " don't know why both Clark and Shearer would not be " responsible,—the one to the Marine Bank or to William M. Ross & Co., and the other to Shearer & " Paine, for the money which was lent by the respective " parties to them, and with which this judgment was purchased. The object undoubtedly was to compel Selz ' & Leopold to contribute their proportion. They took " this course to oblige them to pay a part of the judgment, " by causing it to be placed in the hands of their friends " rather than in the hands of Unna. And the question is,

" whether they had not the right to do that, and can Selz " & Leopold be heard against it?

" It is said that these assignees can be in no better position than Unna, and, inasmuch as this was a valid " agreement, made with Unna by Selz & Leopold, that " the assignees took the judgment with the *onus* of this " agreement, though made before, upon it, and with the " equity, whatever there was between Unna and Selz & " Leopold, upon it. That might be true in an ordinary " case. I am prepared to admit the general rule, that the " assignee of a judgment takes it with all the equities that " there may be, and that these equities can be set up as " well against the assignees as against the assignor. But " I hardly think that such an agreement as this, which is " not an equitable, *but an inequitable agreement*, so far " as the other defendants are concerned, can be set up in " a case like this, to protect them from a liability which, " when the judgment was obtained, was as binding on " them as on the other parties, defendants in the case.

" The general rule undoubtedly is, that there can be no " contribution between wrong-doers, and this was an action of trespass against these parties. This rule has " been qualified considerably, and many exceptions already exist under it. (See 1 Parsons on Contracts, 37, " and authorities there cited, particularly *Bailey* v. *Bussing*, 28 R., 455 Conn.,) and it is doubtful whether the " rule could be said to operate in a case like this.

" At any rate, I am not disposed to grant these plaintiffs relief until I am satisfied that they have done equity " as to the other defendants.

" And inasmuch as the other parties have paid what was " their proportion of the judgment, William M. Ross &

" Co., Shearer, Strong & Paine, Kohn & Bros., and the
" only effect of the proceedings which I am now asked to
" enjoin and put a stop to, is, that Selz & Leopold shall be
" compelled to pay their share, I do not feel inclined to
" interfere.

" The bill will, therefore, be dismissed."

The following order was then made in this case:

" Morris Selz and Henry Leopold v. Levi J. Unna, William M. Ross, John H. Ross, Leonard B. Shearer, William M. Strong, Daniel L. Shearer and William Clark,
" Henry A. Kohn and Joseph Kohn. Chancery.

" The Court having considered, and being now fully
" advised upon the matters hereto submitted herein, order
" that the bill of complaint in this cause be dismissed at
" the costs of the complaints.

" It is thereupon considered and adjudged by the Court
" that the defendants do have and recover of the complainants their costs and charges by them about their defense in this behalf expended, amounting to the sum of
" eighty-one dollars and ten cents, and that they have execution therefor."

Never willing to do equity, the complainants sued out a writ of error to this Court, where the case now stands for hearing on the facts stated.

ARGUMENT.

The general question is, did the Circuit Court err in dismissing complainants' bill?

The proposition, as a legal inquiry, may be thus resolved:

1. *The consideration whereon the complainants predicate their claim to the relief claimed, is inequitable.*

2. *The defendants, Daniel L. Shearer and William Clark, were bona fide purchasers of the judgment for full and valuable consideration.*

3. *The complainants have no right, title or interest in or to, and are in no manner or way liable on account of the premises in respect to which they seek to enjoin the Marshal from making a deed.*

4. *The defendants, Ross & Co., Kohn & Brother, and Shearer & Strong, each actually paid one-fourth part of the judgment.*

Having already fully and fairly stated the case as it stands on the record, no other or farther argument would seem to be necessary in support of these positions, but being controverted on the part of compiainants, they will be discussed in their order.

I.

The consideration whereon the complainants predicate their claims to the relief prayed, is inequitable.

What is there in this case that addresses itself to the consideration of a Court of Equity, one of whose maxims is, " he who seeks equity must be prepared to show that he has done and is ready to do equity."

Look at the case: Honest creditors engaged in a common defence which already evinced success in the failure of one jury to agree on a verdict. These complainants and their confederate, Cohen, who now does the swearing, say that they, just as the case was called for trial a second time, secretly, and without the knowledge of their co-defendants, by agreement with the common prosecutor, Unna, not to collect from them any part of the judgment that he might obtain, desisted and abstained from all further participation in the defence, and with their counsel retired from the court room, leaving their confederates to be victimized, while they went free.

This is the consideration whereon these complainants, with much effrontery, predicate what they term their right to the interpositian of a Court of Equity, and ask to be relieved from paying any part of the judgment which was obtained under, and by virtue of, this secret arrangement between them and the common prosecutor.

Equality is equity, but we have yet to learn that he who secretly bargains for a benefit that must necessarily result to the injury of others standing in the same relation, falls within the definition.

It is a maxim of equity, old as the doctrine itself, "*He* "*that hath committed iniquity shall not have equity.*"

Within this maxim the complainants have clearly shown their case to come—as the following extract from the bill will more fully elucidate:

"Your orators would further state that at the October "term, 1858, the said action was tried by a jury, and the "jury failing to agree upon a verdict, was discharged by "the Court, and the action was continued to the succeeding "term. That at said trial in October, 1858, your orators "appeared, by their attorney, and participated in the "trial.

"That afterwards, and before the said trial at which "said judgment was obtained, the said plaintiff, J. Unna, "agreed with your orators, that in consideration that "your orators would desist and abstain from all participation in the further proceedings in said action, and "the preparation and conduct of the defence thereof, "he, the said plaintiff, would protect your orators and save "them harmless from all loss or damage from, or under "whatever judgment might be rendered in the said action, and so control and direct the collection or enforcement of the said judgment so to be recovered, that "no part of the same should be paid or collected by, "or from your orators, under any execution issued thereon "or otherwise, and, pursuant to said agreement, your orators did desist and abstain from all participation in the "further proceeding in the said action and conduct of the "defence thereof, *and the counsel of your orators* retired "from the court room at the time that the said cause was "called for trial, with the knowledge of said Unna, and "pursuant to the aforesaid understanding between your "orators and said Unna."

Assuming for the argument, that this agreement was actually made between Unna the common prosecutor, complainants Selz & Leopold, and their confederate Abraham Cohen, the question is, did it form such an equity as attached to, and followed the judgment into, the hands of the assignees, Daniel L. Shearer and William Clark, within the meaning of the rule that the assignee of a chose in action takes it subject to all the equities existing between the original parties.

Clearly this case can, in no just sense, be said to come within that highly equitable rule.

In the great case of *Redfearn* v. *Ferrier et al.*, 1 Dow Rep., 50, which was an appeal—in a Scotch case—it was decided by the House of Lords in England, after great discussion that, " *a latent equity in a third person* shall not " defeat a *bona fide* assignee of a right without notice, ex- " cept it be an assignment by an executor which carries " on the face of it notice of his fiduciary character."

That the rights which complainants insist they are entitled to under and by virtue of the pretended agreement set out in the bill is, if an equity at all, predicated on a latent secret agreement, would seem to be a proposition too plain to admit of argument or doubt.

They seem to forget that they are in a Court of Equity, not offering to do equity, but asking, as a matter of right, the enforcement of a private, underhand, secret agreement between them and the assignor of the judgment, entered into *mala fide* in respect to their co-defendants, who, at that time, stood in such relation to them as to be affected by the contract and the consequences of it.

This is a fraud, to enforce which, a Court of Equity will never lend itself.

Thus we find it laid down by Mr. Justice Story in his Commentaries on Equity Jurisprudence, under the head "Constructive Fraud:"

"Let us now pass to the consideration of the third class " of constructive frauds, combining, in some degree, the " ingredients of the others, but prohibited mainly because " they unconscientiously compromit, or injuriously affect, " the private rights, interests or duties of the parties themselves, or operate substantially as frauds upon the private rights, interests, duties or intentions of third persons.

"Sec. 333. But the general class of cases in which relief " is granted, under this third head of constructive fraud is, " that where the contract or other act is substantially a " fraud upon the rights, interests, duties or intentions of " third persons. And here, the general rule is, that particular persons, in contracts and other acts, shall not " only transact *bona fide* between themselves, but shall " not transact *mala fide* in respect to other persons, who " stand in such a relation to either, as to be effected by " the contract or the consequences of it."

The sole and only consideration whereon the complainants, Selz & Leopold, ask relief, being a secret and underhand agreement, entered into *mala fide* in respect to the rights of their co-defendants in a common cause, whose relation was such as to be injuriously affected thereby, is not only inequitable, but as to such defendants, fraudulent.

Manifesta probatione non indigent.

If, on account of this extraordinary agreement, the complainants are entitled to any relief, let them seek it from

Unna, who alone, if any one, acted in bad faith towards them.

II.

The defendants, Daniel L. Shearer and William Clark, were bona fide purchasers of the judgment for full and valuable consideration.

This proposition is more a question of fact than law.
Probandi necessitas incumbit illi qui agit.

With this justly equitable rule we propose to comply.

Judge Beckwith, a gentleman of as high social standing, integrity and intelligence as is ordinarily to be met with in any community, having arranged in person all the preliminaries of the purchase for the assignment of the judgment, was called upon as a witness to state the facts in regard thereto. His testimony will be found on page 64 of the printed Record, as follows:

**" What is your name, age, occupation and place of res-
" dence ?"**

**" My name is Corydon Beckwith; I am over 41 years
" of age; I am an attorney, and I reside at Chicago, Illi-
" nois.**

**" What do you know, if anything, in relation to an as-
" signment of a judgment obtained in the Circuit Court
" of the United States for the Northern District of Illi-
" nois, wherein Levi J. Unna was plaintiff, and Henry A.**

" Kohn *et als.* were defendants ? State all you know in
" relation to it particularly, and whether such an assignment
" was an absolute or *bona fide* one or not ?

Ans. " In the fall of 1860, William M. Ross applied
" to me, said Ross being one of the defendants in the suit
" mentioned in the interrogatory, for my opinion in regard
" to the case which was then pending in the Supreme
" Court of the United States. He furnished me with a
" printed copy of the record, obtained from the Clerk's
" office at Washington, D. C. I knew nothing of the case
" before that time. I gave him my opinion and advised
" him what had better be done in order to protect his
" interests. At the request of Daniel L. Shearer and
" William Clark, I negotiated with Messrs. Van Buren &
" Gary for the purchase, by them, of the judgment in favor
" of Unna against Kohn *et als.* The terms of the
" purchase were agreed on by Judge Gary and myself.
" The assignment was drawn by Judge Gary. He procured
" it to be executed. The money was paid to him in
" my office by Messrs. Shearer and Clark, and a copy of
" the assignment was placed in the United States Court
" on the 18th of October, 1860, by my direction. Shearer
" paid one-half the money and Clark the other half.
" Shearer acted as the friend of the defendants, Shearer
" & Strong, and Clark was the friend of William M. Ross
" and John H. Ross. I had no knowledge from what
" source Daniel L. Shearer obtained the money which he
" paid, further than what he stated at the time. He
" stated at the time that it was his own money. *Clark*
" *borrowed the money which he paid, of William M. Ross*
" *& Co., and gave his notes therefor.* I made the arrangements
" by which Clark borrowed the money and gave
" his notes. *The purchase was a bona fide one,* and although
" Clark made the purchase as the friend of Ross,

“ there was no understanding or agreement that Clark was “ not to pay his notes when they became due. On the “ contrary, they were both expressly told by me, in making the arrangement, that no such understanding was to “ exist between them.

“ Sometime after this, William M. Ross handed me the “ notes of Clark, and I kept them until about the month of “ March, 1864. I do not recollect that Ross gave me any “ particular instruction in regard to them. Soon after the “ notes were handed to me, I told Mr. Clark that when “ the judgment was collected, and he paid over the money “ to Ross, I should consider that a payment of his notes. After the judgment was affirmed by the Supreme Court of “ the United States, an execution was issued thereon, and, “ as I understand, was returned satisfied by the Marshal. “ Some time after the execution was returned, Clark applied to me for his notes, and I gave them to him, stating to him at the time, that I supposed the matter was all “ settled up, and that it would serve no use or purpose for “ me to retain them, but that if there was any reason why “ he should not have them, he must return them to me. “ I had no conversation with William Ross or John Ross “ about giving up the notes. At the time Clark and “ Shearer made the purchase of the judgment, the conversation between Clark and Ross, in regard to it, took “ place in my presence. I did the principal part of the “ talking myself. Mr. Ross went out and brought Clark “ into the office, without letting him know particularly “ what was wanted of him until he got there. I then “ stated to Mr. Clark that I wanted he should buy the “ one-half of the judgment of Unna against Kohn *et* “ *als.*, and take an assignment of the same to himself and “ Daniel L. Shearer. Clark replied that he hadn’t got the “ money. I told him Mr. Ross would lend him the money

" and take his notes therefor, but that there must be no
" understanding between himself and Ross that the notes
" were not to be paid, or that the transaction was not an
" absolute one on his part. I asked Ross if he would lend
" him the money, and take his notes therefor. Ross said
" he would. This was all the conversation there was on
" the subject."

Having shown how and where the defendant Clark got the money which he paid for his share of the judgment, let us see how and where the defendant Daniel L. Shearer procured what he paid.

Mr. Lowing, cashier of the Blackstone Bank, of Boston, was examined by complainants, as a witness on that very point, and in the course of his testimony say:

" On the 11th of October, 1860, our Blackstone Bank
" issued a certificate of deposit for three thousand four
" hundred and forty dollars and sixty seven cents, made
" payable to the order of D. L. Shearer, upon a deposit
" by him of that amount then made in our said bank. We
" did not make any certificate, to my knowledge, payable
" in favor of John S. Paine. I believe that D. L. Shearer
" kept no regular account at our said bank *at that time*,
" but the firm of Shearer & Paine, composed of Leonard
" B. Shearer and John S. Paine, did keep an account at
" our bank at that time. I find, on examining the books
" of our bank, that on the same day we issued this certi-
" ficate of deposit, payable to the order of D. L. Shearer,
" we charged the account of Shearer & Paine a check of
" similar amount. No deposit to the credit of D. L. Shear-
" er was entered in a separate account. It was entered
" to credit of " certificates returnable," which was the
" name of the account in which *all* certificates of deposit
" *we issued were entered*. Whether the said certificate of

" deposit was issued upon the said check of Shearer &
" Paine or not, I cannot tell, except that they were of the
" same amount. I suppose that the certificate was issued
" upon Shearer & Paine's check.

" The certificate is now in existence. I have it. I an-
" nex hereto a copy, marked (A,) with its indorsements.
" I don't know whether D. L. Shearer was in this State
" in 1860. I have no recollection of seeing him here at
" that time, or that he ever did business for himself at
" our bank."

Record, p 63.

As appears from the testimony of the witnesses Eugene C. Long and Joseph E. Gary,—William Clark and Daniel L. Shearer, for the obvious convenience of the several parties to whom the money was to be paid, made deposit thereof with the "Chicago Marine and Fire Insurance Company," and took from that institution eleven certificates of deposit, which were paid over to Unna's attorneys, who distributed nine of them in payment of Court costs and attorneys' fees, and gave the other two, each of two thousand four hundred and eight dollars and ninety-four cents, to Unna.

See printed Record, pp. 46, 47, 51, 52, 53, 54 and 55.

Was there anything in all this transaction, so far as Daniel L. Shearer and William Clark were concerned, that evinced bad faith.

Had they not a perfect legal and equitable right to purchase the judgment, and borrow the money to pay for it wheresoever they could?

Will it be pretended that Clark was not liable to Ross & Co on his note, or that Daniel L. Shearer was not legally the owner of the certificate which he received from the Blackstone Bank?

To say that Daniel L. Shearer acted in the transaction as the friend of his brother, Leonard B. Shearer, and William W. Strong, and that Clark acted as the friend of William M. Ross and John H. Ross in no manner or way shows that in making the purchase of the judgment they were not *bona fide* purchasers, for full and valuable consideration, without any knowledge or notice of the pretended equities now set up at the eleventh hour, by these complainants.

" The Court will not, of *itself*, presume a party to have
" a better *title*, or better claims for *equity*, than the plead-
" ings of the party himself disclose."

Farren's Bill in Chancery, p. 1.
Bury v. *Bokenham*, 1 Dyer, 12, *a*.
Norbury v. *Meade*, 3 Bligh, 233.
Cuthbert v. *Creasy*, 6 Maddock, 189.
Flint v. *Field*, 2 Anstruther, 543.
9 Peters, 503.

The *bona fides* of the transaction is put beyond doubt or controversy by Judge Beckwith, whose testimony bears with it a weight against which sophistry and assertion are harmless missiles.

III.

The complainants have no right, title or interest in or to, and are in no manner or way liable for or on account of *the premises in respect to which they seek to enjoin the Marshal for making a deed.*

Of the truth of this proposition there can be no doubt, because it is stated and sworn to by the complainants in their bill.

The complainant Morris Selz is an entire stranger in regard thereto. It was formerly the property of the complainant Leopold and his co-partner, Benedict Sclossman, who, by *quit claim* and deed of assignment, vested the title thereto in one Emanuel Frankenthal, for the benefit of their creditors. Frankenthal, as assignee, sold it to one Henry' Schoelkopf, for three thousand dollars, and applied the money towards paying Leopold and Sclossman's creditors.

It may be asked, how it came to be sold under the execution as the property of Leopold, if he had no interest in it. This is a very simple question, and, in view of the facts, easily answered.

At the time Unna obtained the judgment, Leopold was not a bankrupt. He had an individual interest in the property with Sclossman, to which the lien of the judgment attached. Subject to such lien, he quit claimed and assigned it to Frankenthal, as part of the assets of Leopold & Sclossman. Frankenthal, as assignee, vested what title he acquired in Scholkopf, who purchased with his eyes open, knowing and bound to know that in so doing, not only was he without guaranty or warranty, but that the property was then subject to the lien of this very judgment.

There is no pretence that either Leopold or his assignee, Frankenthal, are in any manner or way liable to

Schoelkopf, on account of the title thus acquired. On the contrary, it may well be presumed, that in making the purchase, Schoelkopf did so at a price to warrant him against the contingencies of the judgment.

Why is not Schoelkopf a party to this suit? He makes no complaint, and yet he is the only person to be affected by it.

Why, at least, not show to the Court that the price paid by him was the full value of the property?

How does it happen that Schoelkopf is so far forgetful of his own interests? and how does it come that these complainants are so very solicitous therefor?

We have always understood it to be settled law, that to be entitled to the interposition of a Court of Equity, made it incumbent on the party asking therefor to show a legal or equitable title or right to the property or thing in regard to which such interposition is asked; and that mere officiousness with regard to the interests or business of other people was not sufficient.

The complainants in this case state and show to the Court, on their oaths, that they have no right, title or interest, legal or equitable, in or to the property in regard to which they ask an injunction, except the title of officiousness in the business of an individual who is not even a party to the record.

IV.

The defendants Ross & Co., Kohn & Brother and Shear-

er & Strong, each actually paid one-fourth part of the judgment.

The endorsements on the execution—(printed Record, p. 59)—establish this proposition in language too plain to be misunderstood, and too forcible to be construed away by the bare assertion of counsel.

If the Marshal did not pay, and the counsel of the judgment creditors did not receive the moneys receipted for on the execution, it was a fact susceptible of proof, the affirmative of which was on the complainants. Why did they not attempt to make the proof? why not call the Marshal. Until they do so, the record must stand, even in opposition to the assertion of the counsel for complainants.

That this Court, whose motto is, "*Fiat justia ruat coelum,*" will affirm the judgment of the Court below, as an act of justice, we have no doubt.

JNO. J. McKINNON,

Of Counsel for Appellees.